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AGENDA

WORK SESSION OF THE CITY COUNCIL

MARCH 28, 2006

6:30 P.M.

TOWN HALL CONFERENCE ROOM

5300 BELT LINE ROAD

AND

REGULAR MEETING OF THE CITY COUNCIL

7:30 P.M.

COUNCIL CHAMBERS

5300 BELT LINE ROAD

WORK SESSION

Item #WS1 - Presentation of the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way.

Item #WS2 - Presentation of the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

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| <u>#2a</u> - | Approval of the Minutes for the March 14, 2006, Council Meeting. |
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| <u>#2b</u> - | Consideration and approval of a resolution to award bid to Allegra Print and Imaging, for the Town's printing services annual contract. |
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| <u>#2c</u> - | Approval of final payment to Nortex Concrete Lift and Stabilization, Inc., for raising and undersealing concrete pavement on Midway Road. |
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| <u>#2d</u> - | Consideration and approval of a resolution to award bid to Sta-Dri, Inc., in the amount of \$108,977 for roof replacement and repairs at the Service Center and Fire Station #2 municipal facilities. |
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Item #R3 - **PUBLIC HEARING** on Case 1509-Z/Town of Addison concerning, and consideration of approval regarding, an ordinance amending the Town's Comprehensive Plan by inclusion of Policies designating sub-districts, outlining standards for residential and non-residential development of the Belt Line Road corridor, and identifying other strategies, for enhancing the corridor, and by incorporating a conceptual plan of such districts.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

The Planning and Zoning Commission Findings:

The Planning and Zoning Commission will review this request on March 23, 2006 at 7:30 p.m. The staff will present the Commissioner's decision at the meeting.

Administrative Recommendation:

Administration recommends approval.

Item #R4 - **PUBLIC HEARING** regarding, and consideration of, an approval of a resolution approving the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way.

Attachments:

1. Council Agenda Item Overview
2. Photo
3. Cost Estimate

Administrative Recommendation:

Administration recommends approval.

Item #R5 - Consideration and approval of a resolution approving the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

Attachments:

1. Council Agenda Item Overview
2. AAF Comprehensive Streetscape Plan

Administrative Recommendation:

Administration recommends approval.

Item #R6 - Consideration and approval of a resolution to award bid to Union Metal Corporation in the amount of \$46,650 for the purchase of five (5) traffic signal poles and arms for the Congestion Mitigation Air Quality (CMAQ) Program, Project #12 on Midway Road.

Attachments:

1. Council Agenda Item Overview
2. Bid Summary

Administrative Recommendation:

Administration recommends approval.

Item #R7 - Consideration and approval of a resolution to award bid to Advanced Paving, in the amount of \$677,765 for construction of the Addison Airport Asphalt Improvements Project for the Town of Addison.

Attachments:

1. Council Agenda Item Overview
2. Bid Summary

Administrative Recommendation:

Administration recommends approval.

Item #R8 - Consideration and approval of a resolution authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) in the amount of \$236,145 from the Texas Department of Transportation, for airport improvements at Addison Airport.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R9 -

PUBLIC HEARING regarding, and consideration of, an approval of an ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R10 -

Consider a resolution approving a gas standing steering committee participation agreement regarding the Town's participation with other cities in connection with matters related to Atmos Energy; authorizing the city manager to execute the agreement on behalf of the Town; providing for the Director of Financial & Strategic Services to receive information in connection with the agreement and to carry out the city's responsibilities thereunder; providing for the payment of a fee for the Town's participation in the agreement; providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Agreement
4. Covington Report

Administrative Recommendation:

Administration recommends approval.

EXECUTIVE SESSION

Item #ES1 – Closed (executive) session of the City Council pursuant to Section, 551.071, Texas Government Code, to conduct a private consultation with its attorney(s) on a matter or matters in which the duty of the attorney(s) to the Town Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551, Tex. Gov. Code, regarding and relating to property taxation.

Item #ES2 - Closed (executive) session of the City Council pursuant to Section 551.074, Texas Government Code, to deliberate a performance evaluation of the City Manager.

REGULAR SESSION

Item #R11 – Consideration and approval of a resolution approving a merit increase and salary adjustment for the City Manager.

Adjourn Meeting

Posted 5:00 p.m.
March 24, 2006
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

Council Agenda Item: #WS1**SUMMARY:**

We are recommending that the Council approve the re-configured design for the new dog park to be constructed within the TXU electric transmission right-of-way 155 feet east of the Easement Park eastern boundary fence. The attached aerial shows the new proposed location.

FINANCIAL IMPACT:

Budgeted Amount: \$65,000.00

Construction Cost Estimate: \$49,754.00

Councilman Braun has offered to donate the concrete work associated with the sidewalks in the dog park entrance area, which staff estimated at \$8,800. By pushing the park 155 feet to the east, 775 square feet of concrete was added to the cost estimate. The original concrete estimate was \$5,640. A detailed construction budget is attached.

Remaining funds can be used for landscape enhancements to buffer noise within the existing Easement Park.

BACKGROUND:

Based on citizen and Council recommendations from the March 14, 2006 Council Meeting, staff looked at the option of pushing the dog park further to the east toward Midway Road to create separation from the dog park and the residents who live along the east end of the Easement Park. By moving the dog park 155 feet east from the existing Easement Park fence, the dog park dimension would change from 80 feet by 250 feet to 80 feet by 240 feet. The new alignment avoids having an electric transmission tower inside the dog park, and stops the east side of the park short of an existing drainage ditch. As shown on the aerial photo, fencing will be placed the entire length of the buffer/separation area and the dog park to prevent access from the Office in the Park and the Marriott Courtyard.

Staff feels there are no other viable options available in the Les Lacs and Midway Meadows areas to consider as an alternative site.

The revised layout was submitted to TXU's right-of-way division, which is pending their approval.

RECOMMENDATION:

Staff recommends approval.

Attachments: Dog Park Design
Revised Aerial Photo
Construction Cost Estimate

1 inch equals 40 feet



Future Dog Park

New Dog Park Cost Estimate

March 15, 2006

Fencing: (1,102) linear feet of fencing with (3) 16' and (5) 6' gates @ \$23.19/ft.	\$27,364.00
Concrete: (400) sq. feet of concrete pads, including HC pads at the self closing gates and (297) linear feet of 5' sidewalk; estimate from input from Jim Bowman (pads \$7.00 per sq. ft. and sidewalk \$4.00 per sq. ft. /all 4" thick)	\$8,800.00
(4) Wabash Valley 6' benches: \$375.00 each	\$1,500.00
(5) Wabash Valley trash cans: \$270.00 each (includes liner and lid)	\$1,350.00
Freight estimate for all Wabash Valley items:	\$720.00
(5) Pet waste dispensers:	\$400.00
(2) Pet drinking fountains: \$1350 each plus \$120 delivery	\$2,820.00
(1) Hose bib	\$300.00
Irrigation (in-house; includes parts bore and rentals)	\$3,000.00
Electrical: Includes conduit, wiring, panel, cabinet, meter base (large enough for future lights)	\$3,500.00
Grand Total	\$49,754.00

Budgeted Amount: \$65,000

Council Agenda Item: #WS2

SUMMARY:

Staff is recommending that the Council approve the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

BACKGROUND:

The Addison Arbor Foundation Comprehensive Streetscape Plan will serve as a template to guide future street tree planting projects and programs. The plan will be used by the AAF to develop a public awareness and marketing program to promote the Foundation's goals and objectives. The AAF will use it as a fundraising tool to solicit grants and donations for tree planting projects. The overall plan will be displayed in the AAF donation brochure and on the AAF's new website.

Staff will use the plan as a guideline for planning, designing and budgeting for all future street tree projects, as well as, for forecasting maintenance and replacement costs. Subsequent to the adoption of the plan, a detailed tree inventory will be completed this year to document the existing tree resources, so the parks department can measure and track their implementation efforts.

RECOMMENDATION:

Staff recommends approval.

Attachments: Addison Arbor Foundation Comprehensive Streetscape Plan

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

March 14, 2006
7:30 p.m. - Council Chambers
5300 Belt Line Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Mellow, Niemann
Absent: Mallory

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Douglas Spray (Fire), and Sara Sexton (Animal Control Services).

Item #R2 - Consent Agenda.

#2a – Approval of the Minutes for the February 28, 2006, Council Meeting.
(Approved as written.)

Councilmember Braun moved to duly approve the above listed item.
Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mellow, Niemann
Voting Nay: None
Absent: Mallory

Item #R3 – **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, Suite 180, on application from Taco Del Mar, represented by Mr. Bob G. Baker.

Mayor Chow opened the meeting as a public hearing. There were no questions or comments. Mayor Chow closed the meeting as a public hearing.

Councilmember Hirsch moved to duly pass Ordinance No. 006-013 approving an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 4980 Belt Line Road, Suite 180, on application from Taco Del Mar. Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mellow, Niemann
Voting Nay: None
Absent: Mallory

Item #R4 – **PUBLIC HEARING** regarding, and consideration of, an approval of a resolution approving the new dog park design to be located east of the Easement Park within the TXU electric transmission right-of-way.

Mayor Chow opened the meeting as a public hearing.

The following residents spoke in opposition of the new dog park:

Nancy Wright
4111 Rive Lane

Sharon Tyra
4107 Rive Lane

Scott Long
4107 Rive Lane

Bob Jacoby
4016 Rive Lane

Mayor Chow closed the meeting as a public hearing.

This item was tabled.

Item #R5 – Presentation by Randy Newsom, Area Manager with TXU Electric Delivery, on a project to install electrical service transmission lines in the DART railroad right-of-way from the Arapaho Road Substation west of Surveyor Blvd., to the Carrollton Country Club Substation.

No action taken.

Item #R6 – Consideration and approval of a resolution approving a revision to the Town's policy on extended military leave and in compliance with all the regulations and requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Councilmember Niemann moved to duly pass Resolution No. R06-024 approving a revision to the Town's policy on extended military leave and in compliance with all the regulations and requirements of the Uniformed Services Employment and Reemployment Rights Act (USERRA), subject to reference changes. Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mellow, Niemann
Voting Nay: None
Absent: Mallory

Item #R7 – Consideration and approval of a resolution authorizing the City Manager to execute a Ground Lease Early Termination Agreement between the Town of Addison as Landlord and Piedmont Hawthorne Aviation, Inc., as the Tenant, affecting Ground Lease #0150-1702 and the demised premises located at what is commonly known as 4545 Eddie Rickenbacker at Addison Airport.

Councilmember Kraft moved to duly pass Resolution No. R06-025 authorizing the City Manager to execute a Ground Lease Early Termination Agreement between the Town of Addison as Landlord and Piedmont Hawthorne Aviation, Inc., as the Tenant, affecting Ground Lease #0150-1702 and the demised premises located at what is commonly known as 4545 Eddie Rickenbacker at Addison Airport subject to review by City Attorney. Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mellow, Niemann
Voting Nay: None
Absent: Mallory

EXECUTIVE SESSION. At 9:05 p.m., Mayor Chow announced that the Council would convene into Executive Session to discuss the following items:

Item #ES1 – Closed (executive) session of the City Council pursuant to Section 551.071, Texas Government Code, to conduct a private consultation with its attorney to seek the advice of its attorney about pending litigation, to wit: *Transcontinental Realty Investors, Inc. et al, v. The City of Addison, Texas*, Case No. 03-03457, 160th Judicial District Court, Dallas County, Texas, and on a matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 552, Tex. Gov. Code.

Item #ES2 – Closed (executive) session of the City Council pursuant to Section 551.074, Texas Government Code, to deliberate a performance evaluation of the City Manager.

The Council came out of Executive Session at 10:43 p.m.

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b**SUMMARY:**

This item is to consider an award to Allegra Print and Imaging for the Town's printing services annual contract.

FINANCIAL IMPACT:

Budgeted Amount: Funds are available in each department's operating budget for printing services, normally out of the Office Supplies line item.

Cost: Cost will be variable depending on orders from each department. Town-wide approximately \$52,000 was spent on miscellaneous printing services during Fiscal Year 2005. It is estimated the new contract will save the Town 10% on general printing services, not including special printing projects.

BACKGROUND:

The Town utilizes an annual contract for printing services on an as-needed basis for the purchase of various printed materials for use by Town departments including letterhead, envelopes, and business cards. The following criteria were used to evaluate bids:

- Bid price – 15%
- Procedures for quality control – 25%
- References – 30%
- Turnaround time – 25%
- Proximity – 5%

Approximately \$52,000 was spent on miscellaneous printing services during Fiscal Year 2005. The contract term is for April 1, 2006 through March 31, 2007. After the initial one year term, there are options to extend the contract for two one-year terms.

A task force made up of representatives from several Town departments was used to establish the award criteria and evaluate bids. Listed in the attached sheet are the criteria used to evaluate each bid and the scores for the bids received.

193 vendors were notified of this bid and there were 53 planholders. Seven bids were received, although two were disqualified for not being signed. Using the weighted price evaluation method, the quality questionnaire form, references, turnaround time, and proximity, Allegra Print and Imaging had the highest total score.

RECOMMENDATION:

Staff recommends approval of this bid.

**Bid 06-09 Printing Services Annual Contract
Bid Evaluation Scores**

Criteria	Max Points Available	Allegra Print and Imaging	Alpha-graphics	Addison Printing	Print Team	Knight Graphics and Printing
Bid Price Staff utilized a weighted price evaluation method. Bidders were asked to specify unit prices, which were then multiplied by the weight factor to develop a total weighted price. The lowest total weighted bid price was awarded all 15 points. All other bidders received points based on the ratio of their price to the lowest weighted bid price.	15.00	15.00	9.84	11.04	14.40	14.98
Procedures for Quality Control This criterion was measured by answers provided by the bidder on the Procedures for Quality Control Questionnaire. Points were assigned by the task force based on the bidder's ability to meet the minimum requirements set forth by the Town for quality control.	25.00	15.00	20.00	15.00	12.50	15.00
References Five references were contacted for each bidder. References were asked to score the bidder and scores were averaged.	30.00	28.80	28.20	28.00	24.00	25.20
Turnaround Time Turn around time for both standard and rush jobs was considered. The lowest standard turn around time was awarded 15 points. All other bidders received points based on the ratio of their time to the lowest time. The lowest rush turn around time was measured similarly.	25.00	22.50	22.50	25.00	22.50	18.33
Proximity Proximity was scored as follows: bidders within 5 driving miles of Addison Town Hall (5300 Belt Line Road) were awarded the full 5 points, bidders within 6 to 10 miles 4 points, bidders within 11 to 15 miles 3 points, bidders within 16 to 20 miles 2 points, bidders within 21 to 30 miles 1 point, and bidders outside 30 miles zero points.	5.00	5.00	4.00	5.00	4.00	3.00
Total Points	100.00	86.30	84.54	84.04	77.40	76.51

Council Agenda Item: #2c**SUMMARY:**

This item is first and final payment to Nortex Concrete Lift and Stabilization, Inc. for raising and undersealing concrete pavement on Midway Road.

FINANCIAL IMPACT:

Budgeted Amount: \$250,000

Contract Amount: \$228,051.87

This project is funded for 2006 with Street Bond funds.

BACKGROUND:

In early 2002 the Public Works Department began using a contractor to inject a high-density polyurethane material under concrete pavement to lift and stabilize the pavement. This process has been very successful at lifting and stabilizing portions of Midway Road north of Belt Line Road.

On December 13, 2005, Council awarded a contract to Nortex to inject high-density polyurethane material under the concrete pavement at various locations on north Midway Road. This contract was for \$182,442.19.

On February 14, 2006, Council authorized staff to increase this contract by up to 25%, for a total amount not to exceed \$228,052.74. This increase was necessary to complete the project, as the contractor found larger voids under the slabs than were found on previous projects.

RECOMMENDATION:

Staff recommends payment in the amount of \$228,051.87 to Nortex Lift and Stabilization, Inc. for raising and undersealing concrete pavement on Midway Road.

Council Agenda Item: #2d**SUMMARY:**

Consideration and approval of award of bid to Sta-Dri Company, Inc., in the amount of \$108,977 for roof replacement and repairs at the Service Center and Fire Station # 2 municipal facilities.

FINANCIAL IMPACT:

Budgeted Amount: \$110,000.00
Cost: \$108,977.00

BACKGROUND:

The first story roof at the Service Center facility is the original roof (built in 1980) and is 26 years old and in need of replacement. The second story roof system is the original roof and was built in 1987. This roof system still has useful life and is only in need of some routine sidewall repairs that are included in this project.

Fire Station # 2 flat roof is 22 years old and is in need of replacement. The pitched shingle roof section of this facility was replaced in 2004.

Staff received six bids. Sta-Dri Company, Inc. was the low responsible bid. Sta-Dri offered a reduced total bid price if awarded the bid for both facilities

RECOMMENDATION:

Staff recommends approval and award to Sta-Dri Company, Inc.

Attachments: Bid Tab

Roof Replacement and Repairs - Service Center and Fire Station Two
Bid No. 06-15

DUE: March 10, 2006
2:00 PM

BIDDER	Signed	Bid Bond	Service Center Roof	Fire Station #2 Roof	Alternate #1	Total Bid
Sta-Dri Company, Inc.*	Y	Y	\$ 91,606.00	\$ 19,121.00	\$ 600.00	\$ 108,977.00
BRI Roofing & Sheet Metal, Inc.	Y	Y	\$ 84,100.00	\$ 24,000.00	\$ 3,000.00	\$ 111,100.00
HEC Roofing Co.	Y	Y	\$ 95,000.00	\$ 28,500.00	\$ 1,000.00	\$ 124,500.00
Roof Management Services, Inc.	Y	Y	\$ 104,467.00	\$ 28,689.00	\$ 1,300.00	\$ 134,456.00
Castro Roofing of Texas	Y	Y	\$ 110,250.00	\$ 37,000.00	\$ 1,485.00	\$ 148,730.00
CEI Roofing - Texas	Y	Y	\$ 123,000.00	\$ 57,400.00	\$ 3,000.00	\$ 183,400.00

* Sta-Dri Company offered a reduced total bid price if awarded the bid for both facilities.

Shanna N. Sims

Shanna N. Sims, Strategic Services Manager

Katie H. Roller

Witness

Council Agenda Item: #R3

DEPARTMENT: Development Services

SUMMARY:

Staff recommends approval of an ordinance amending the Town's Comprehensive Plan by inclusion of Policies designating sub-districts, outlining standards for residential and non-residential development of the Belt Line Road corridor, and identifying other strategies for enhancing the corridor, and by incorporating a conceptual plan for such districts.

FINANCIAL IMPACT:

No financial impact.

BACKGROUND:

The Planning and Zoning Commission has been working for several months on the Comprehensive Plan Policies for the Belt Line Road corridor. These policies were presented to Council in a work session on December 13, 2005, and were presented to the citizens at a public hearing on February 21st.

The Commission feels that the Comprehensive Plan Policies are ready for formal adoption by the Council. State law requires amendments to the Comprehensive plan be adopted by Ordinance.

RECOMMENDATION:

Staff recommends approval of an ordinance amending the Town's Comprehensive Plan by inclusion of Policies designating sub-districts, outlining standards for residential and non-residential development of the Belt Line Road corridor, and identifying other strategies for enhancing the corridor, and by incorporating a conceptual plan for such districts.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CITY'S COMPREHENSIVE PLAN BY INCLUSION OF POLICIES DESIGNATING SUB-DISTRICTS, OUTLINING STANDARDS FOR RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT OF THE BELT LINE ROAD CORRIDOR, AND IDENTIFYING IDENTIFYING OTHER STRATEGIES FOR ENHANCING THE CORRIDOR; AND BY INCORPORATING A CONCEPTUAL MAP OF SUCH DISTRICTS; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, retail and restaurant development along the Belt Line Road corridor has been an important economic engine for the City of Addison; and

WHEREAS, such facilities now appear to be in decline, due to competition for similar uses from neighboring cities; and

WHEREAS, it is essential for the economic well-being of the community to revitalize the Belt Line Road corridor; and

WHEREAS, it is anticipated that there is strong market for mixed residential and non-residential development within the corridor; and

WHEREAS, whereas the corridor may conceptually be divided into four sub-districts that create a sense of identity and provide an opportunity to focus reinvestment along the corridor; and

WHEREAS, development of the corridor may further be enhanced through encouragement of development around future transit centers and by focusing investment on entry features and design features; and

WHEREAS, the Town has retained consultants and commissioned a study to develop recommendations concerning development of the Belt Line Road corridor; and

WHEREAS, the City Planner has compiled the resulting policies concerning development of the Belt Line Road corridor and an accompanying map designating sub-districts in proposed amendments to the Town's Comprehensive Plan; (the "Plan Amendments"); and

WHEREAS, a public hearing was held before the City Planning and Zoning Commission on ____, 2006, at which public testimony was heard, to consider the Plan Amendments; and

WHEREAS, after considering the information submitted at the public hearing concerning the Plan Amendments, public testimony and all other relevant information and materials, the City's Planning and Zoning Commission has recommended to the City Council the incorporation of the Plan Amendments into the Town's adopted Comprehensive Plan; and

WHEREAS, the City Council, after due notice, convened a public hearing on __, 2006, to consider the recommendation of the Planning and Zoning Commission on the Plan Amendments and to take public testimony thereon; and

WHEREAS, after taking public testimony and due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that adoption of the Plan Amendments is in the public interest and that the Town's Comprehensive Plan should be amended to incorporate the Plan Amendments;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Plan Amendments. The Comprehensive Plan of the Town of Addison, Texas, is hereby amended by incorporating the Plan Amendments, attached hereto and incorporated by reference herein as Exhibit A.

Section 3. No Other Amendment; Savings. Except for the amendment and change made herein, the PD Ordinance is not otherwise amended hereby, and all other provisions thereof shall remain in full force and effect. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 4 Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall become effective from and after its date of passage and publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of March, 2006

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

Belt Line Corridor Vision

BACKGROUND

Belt Line Road is Addison's "Main Street". Until recently it was one of the strongest restaurant and retail corridors in the region. However, due to competition from other communities to the north, the loss of Prestonwood Mall, and the Dallas area's northward expansion, Addison's Belt Line Road corridor has suffered.

Addison once had the advantage of being the only city in the northern tier to have both "liquor by the drink" and "sale of alcohol for off-premises consumption, or package stores for wine, beer, and alcohol. Therefore, two major hotels located in Addison in the early 1980s. Those hotels helped Addison draw Class A office buildings, and those buildings, along with "liquor by the drink" allowed Addison to support over 100 very successful restaurants, most of which located on Belt Line. More recently, neighboring municipalities have adopted more liberal alcoholic sales rules for both on-premises and off-premises sale of alcohol, and the market has responded to the new landscape. Farmers Branch, Carrollton, Frisco, and Plano have all expanded their regulations to entice restaurants with beer, wine and liquor sales. While this had caused a short-term decline in both restaurant and package store sales, it has created an opportunity for Addison to "re-invent" this important corridor and diversify and strengthen the uses along it.

A successful Belt Line Corridor is a key to diversifying the City and making it more sustainable. Besides the Tollway, Belt Line Road is the Town's most important commercial corridor. It represents the lion's share of the Town's sales tax revenues and it is a prime contributor to the Town's image and identity. "Reinventing" the corridor to be a pedestrian-oriented mixed use area should attract young professionals and empty nesters with a high level of disposal income — much like Addison Circle. This new population would support the retail and restaurant activity that Addison is known for. With the addition of enhanced streetscaping, a smaller blocks structure and pedestrian-orientated development in association with the housing, the area can become a place which is unique in the region and will attract continuing reinvestment over the long term.

The new connection of Arapaho Road through the district will provide another front door to regional traffic, remove some through-movement traffic movements from Belt Line and open further opportunities for development.

POLICIES

1. **Identify sub-districts that will create a focus for re-investment.** The corridor should be more than a roadway connecting pad sites and strip centers. It should establish "places" with special identities that will provide a varied marketplace for private investment. The districts are:

- Les Lacs Village (between Marsh and Midway)
- Addison Dining District (generally between Midway and the Tollway)
- Addison Epicurean District (centered on Belt Line and Inwood Road)
- Addison Village (east of the Tollway)

Les Lacs Village should become a mixed use retail, residential and office district. Residential uses in this district should be able to capitalize on neighborhood amenities such as the adjacent Addison Athletic Club and the Les Lacs jogging trail. An extension of the Les Lacs jogging trail (which lies within a TXU power easement) north across Belt Line Road should help tie the residential opportunities north of Belt Line to the neighborhood on the south side of Belt Line.

Addison Dining District should become a vibrant mixed-use retail, restaurant and residential district. This area should be expanded southward to incorporate under-utilized properties down to just south of the east-west section of Beltway. This can be accomplished through the creation of smaller blocks which would put in place a more convenient and efficient circulation for pedestrians and automobiles. Residential will be limited to the area west of the north-south section of Beltway due to the noise contours from Addison Airport which cross Belt Line to the east.

Addison Epicurean District should become a center for sales, education and distribution of wine and other beverages, but it should also be a center for fine meats, seafood, fruits, vegetables, fresh breads, cheeses, and flowers. This area has long been known for its wine and liquor offerings, but to keep it sustainable for the long term, the offerings should be expanded to all epicurean items. It should be developed with the feel of a European market or shopping district, where bakers, gourmet shops, and fine food purveyors are located adjacent to the existing liquor stores. This area should be a positive complement to the Addison Dining District which is immediately adjacent. It should host special events such as cooking exhibitions and wine tastings which will draw visitors both locally and regionally to enjoy the "tastes of Addison". In order for Addison to stay competitive with surrounding cities that also sell alcohol, it should increase the offerings to include other gourmet items beside wines and liquors. It should also heighten the amenity level and ambiance of this district. Dramatic lighting and architectural elements should be considered that would make shopping for alcoholic beverages and other epicurean items more of a recreational experience - similar to browsing in a gourmet market as opposed to a regular grocery store.

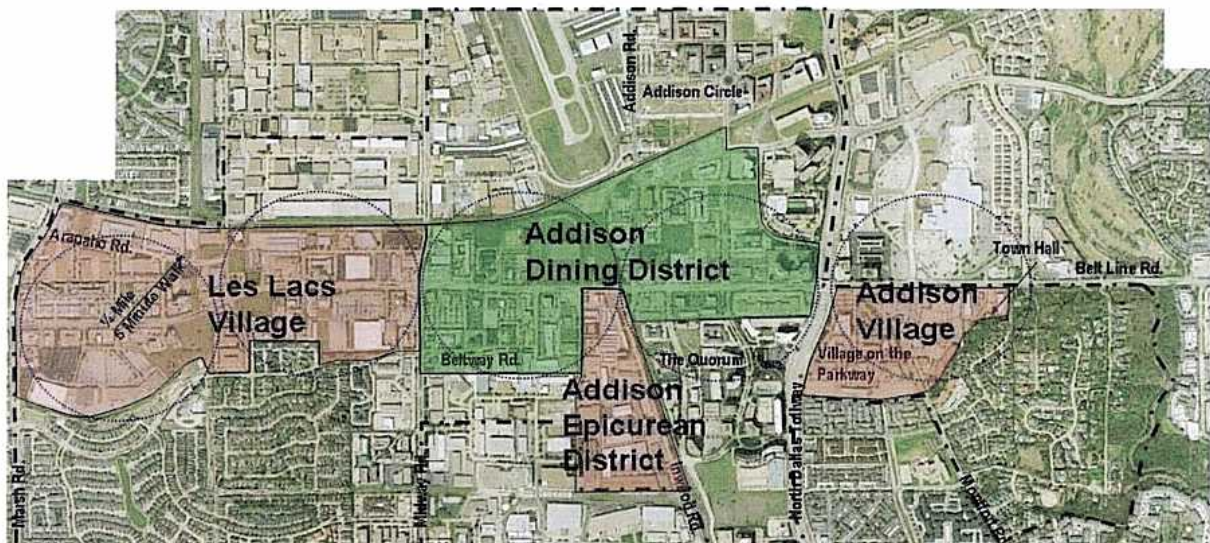
Addison Village should be a mixed use residential and civic area that focuses on Village on the Parkway retail center and City Hall. Clearing up the street pattern by removing Sakowitz Drive and enhancing pedestrian movement at Montfort and Belt Line would more closely

connect retail across and tie into existing and future residential development. The Creek behind Town Hall would provide a pedestrian corridor from several bordering neighborhoods to the Shops.

2. **Enhance Belt Line Road to become a grand “Belt Line Boulevard”.** Based on the grand boulevards of Europe, such as, the Champs Elysee, Belt Line should function and be landscaped as a memorable roadway and a focus for the region. It connects throughout the Dallas area and it would provide identity for the Town, a theme for redevelopment and infill, and a focus for business and residential investment.

A Grand Belt Line Boulevard would be unique in the region and should be designed to accommodate transit or trolley service connecting to the Addison Circle transit station in the future. This will further enhance mobility and reinforce pedestrian movement to create a true transit village identity.

3. **Create a series of architectural elements and entryways along its length.** This will help to further identify special districts and establish themes. These should include such things as featured treatments at the major intersections, and public open spaces or plazas that provide a focus for the districts.
4. **Capitalize on future transit to improve sustainability.** The timing of DART rail service to Addison is still in question, but at some point in the future it will be a reality. Even in the short term, however, some type of fixed rail trolley service connecting across Belt Line and up into Addison Circle may be feasible. This service should connect existing and future residents to a rich variety of retail and restaurant activity. Young professionals, empty nesters and retirees are strongly attracted to transit-oriented development.



Council Agenda Item: #R4**SUMMARY:**

We are recommending that the Council approve the re-configured design for the new dog park to be constructed within the TXU electric transmission right-of-way 155 feet east of the Easement Park eastern boundary fence. The attached aerial shows the new proposed location.

FINANCIAL IMPACT:

Budgeted Amount: \$65,000.00

Construction Cost Estimate: \$49,754.00

Councilman Braun has offered to donate the concrete work associated with the sidewalks in the dog park entrance area, which staff estimated at \$8,800. By pushing the park 155 feet to the east, 775 square feet of concrete was added to the cost estimate. The original concrete estimate was \$5,640. A detailed construction budget is attached.

Remaining funds can be used for landscape enhancements to buffer noise within the existing Easement Park.

BACKGROUND:

Based on citizen and Council recommendations from the March 14, 2006 Council Meeting, staff looked at the option of pushing the dog park further to the east toward Midway Road to create separation from the dog park and the residents who live along the east end of the Easement Park. By moving the dog park 155 feet east from the existing Easement Park fence, the dog park dimension would change from 80 feet by 250 feet to 80 feet by 240 feet. The new alignment avoids having an electric transmission tower inside the dog park, and stops the east side of the park short of an existing drainage ditch. As shown on the aerial photo, fencing will be placed the entire length of the buffer/separation area and the dog park to prevent access from the Office in the Park and the Marriott Courtyard.

Staff feels there are no other viable options available in the Les Lacs and Midway Meadows areas to consider as an alternative site.

The revised layout was submitted to TXU's right-of-way division, which is pending their approval.

RECOMMENDATION:

Staff recommends approval.

Attachments: Dog Park Design
Revised Aerial Photo
Construction Cost Estimate

1 inch equals 40 feet



Future Dog Park

New Dog Park Cost Estimate

March 15, 2006

Fencing: (1,102) linear feet of fencing with (3) 16' and (5) 6' gates @ \$23.19/ft.	\$27,364.00
Concrete: (400) sq. feet of concrete pads, including HC pads at the self closing gates and (297) linear feet of 5' sidewalk; estimate from input from Jim Bowman (pads \$7.00 per sq. ft. and sidewalk \$4.00 per sq. ft. /all 4" thick)	\$8,800.00
(4) Wabash Valley 6' benches: \$375.00 each	\$1,500.00
(5) Wabash Valley trash cans: \$270.00 each (includes liner and lid)	\$1,350.00
Freight estimate for all Wabash Valley items:	\$720.00
(5) Pet waste dispensers:	\$400.00
(2) Pet drinking fountains: \$1350 each plus \$120 delivery	\$2,820.00
(1) Hose bib	\$300.00
Irrigation (in-house; includes parts bore and rentals)	\$3,000.00
Electrical: Includes conduit, wiring, panel, cabinet, meter base (large enough for future lights)	\$3,500.00
Grand Total	<hr/> \$49,754.00

Budgeted Amount: \$65,000

Council Agenda Item: #R5

SUMMARY:

Staff is recommending that the Council approve the Addison Arbor Foundation (AAF) Comprehensive Streetscape Plan prepared by RTKL.

BACKGROUND:

The Addison Arbor Foundation Comprehensive Streetscape Plan will serve as a template to guide future street tree planting projects and programs. The plan will be used by the AAF to develop a public awareness and marketing program to promote the Foundation's goals and objectives. The AAF will use it as a fundraising tool to solicit grants and donations for tree planting projects. The overall plan will be displayed in the AAF donation brochure and on the AAF's new website.

Staff will use the plan as a guideline for planning, designing and budgeting for all future street tree projects, as well as, for forecasting maintenance and replacement costs. Subsequent to the adoption of the plan, a detailed tree inventory will be completed this year to document the existing tree resources, so the parks department can measure and track their implementation efforts.

RECOMMENDATION:

Staff recommends approval.

Attachments: Addison Arbor Foundation Comprehensive Streetscape Plan

Council Agenda Item: #R6**SUMMARY:**

This item is to award a bid to Union Metal Corporation for the purchase of five (5) traffic signal poles and arms for the Congestion Mitigation Air Quality (CMAQ) Program, Project #12.

FINANCIAL IMPACT:

Budgeted Amount: \$0

Cost: \$46,650

Dallas County will reimburse to the Town the cost of these signal poles and arms.

BACKGROUND:

The CMAQ Program, Project #12 is a joint Addison, Carrollton, Dallas County and Farmers Branch project that involves intersection improvements on Midway Road from LBJ to Trinity Mills. The intersections in Addison being improved are Spring Valley Road, Lindbergh Drive, and Keller Springs Road. Dallas County has administered the design phase with TXDOT administering the bid and construction phase. The Town of Addison has been charged with providing (with Dallas County reimbursement) five traffic signal poles and arms, two complete signal cabinets with signal controllers, and numerous signal heads.

This item is the purchase of the poles and arms for the two intersections in Addison (Spring Valley Road, Lindbergh Drive) being widened that require longer poles.

RECOMMENDATION:

Staff recommends awarding this bid in the amount of \$46,650 to Union Metal Corporation for the purchase of five traffic signal poles and arms for the CMAQ Project.

**Traffic Signal Poles
Bid No. 06-12**

**DUE: February 21, 2006
1:00 PM**

BIDDER	Signed	Bid Bond	Total Bid	# of Delivery Days
Union Metal Corp.	y	y	\$ 46,650.00	90 days
Structural & Steel Products	y	y	\$ 51,969.00	70-84 days
Pelco Structural L.L.C.	y	y	\$ 70,742.00	84-98 days

Shanna N. Sims

Shanna N. Sims, Strategic Services Manager

Katie H. Roller

Witness

Council Agenda Item: #R7**SUMMARY:**

This item is to award a contract to Advanced Paving, in the amount of \$677,765.00, for construction of the Addison Airport Asphalt Paving Improvements Project for the Town of Addison.

FINANCIAL IMPACT:

Budgeted Amount: \$696,000.00

Construction Cost: \$677,765.00

Source of Funds: Funds are available from FY 2005-06 Airport Fund.

BACKGROUND:

The Public Works Department and Addison Airport staff established the need for pavement improvements in various areas of the airport. These proposed improvements will be performed on Taxiway "Q", Taxiway "R", the north end of the Richard Byrd hangars and Taxiway "P". This project is the result of numerous pavement failures and the observations of Public Works and Addison Airport staff. The firm of HNTB, Inc. prepared engineering plans and specifications for construction of these improvements.

Attached is a bid tabulation for this project. The bid proposal in the specifications for construction was structured to provide a disincentive method of bidding the improvements. Specifically, each bid submitted was required to consist of the following:

- a. A standard bid (A), which is the summation of the products of the estimated quantities shown in the proposal, multiplied by their bid unit prices.
- b. Project completion in the allotted contract time or a disincentive of \$1,000.00 per day will be assessed against the contractor.

Advanced Paving, Inc. submitted the lowest bid for the total of the Base Bid (\$541,628.00) plus Additive Alternate A (\$137,137.00) in the amount of \$677,765.00. A total of 75 calendar days were allotted to the contractor for this project.

The contractor was subject to a reference check by the staff, and was found to have successfully completed construction of several similar improvement projects for other municipalities and private sector businesses.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a contract with Advanced Paving, in the amount of \$677,765.00, for construction of Addison Airport Asphalt Paving Improvements Project for the Town of Addison.

**Addison Airport Paving Improvements
Bid No. 06-06**

DUE: February 7, 2006

2:00 PM

BIDDER	Signed	Bid Bond	Base Bid	Alternate #1	Total Bid
Advanced Paving Company	y	y	\$ 541,628.00	\$ 136,137.00	\$ 677,765.00
Reynolds Asphalt	y	y	\$ 549,575.55	\$ 131,527.50	\$ 681,103.05

Shanna N. Sims

Shanna N. Sims, Strategic Services Manager

Katie H. Roller

Witness

Council Agenda Item: #R8**SUMMARY:**

Consideration of a resolution authorizing the City Manager to accept and enter into a Grant Agreement for Non-Primary Entitlement Funds (NPE) from the Federal Aviation Administration administered by the Texas Department of Transportation, for airport improvements at Addison Airport.

FINANCIAL IMPACT:

NPE Grant	\$236,145.00
Airport Fund:	\$ 23,614.50

BACKGROUND:

The Town of Addison (Addison Airport) is eligible to receive funding of Federal Non-Primary Entitlement funds (NPE) from the Federal Aviation Administration (FAA) administered through the Texas Department of Transportation. This Grant is Addison Airport's share of the annual non-discretionary entitlement that comes from the Federal Airport Improvement Program (AIP Funding). This past year AIP Funding was set at approximately \$3.2 billion. Each year certain airports are eligible to receive \$150,000 for eligible projects. These grant funds can be utilized for various airfield projects on the airport. This year staff has earmarked the grant to be used for pavement and drainage repairs. This is a 90/10 grant with \$236,145.00 of TXDOT Funds and \$23,614.50 Town of Addison Airport Funds.

The total amount of this grant is a result of partial funds left over from 2004 (\$86,145) and 2005 (\$150,000). An airport can bank these funds for up to three-years if they so choose.

Funds required for the Town's share is available in the Airport fund.

RECOMMENDATION:

Staff recommends approval.

Council Agenda Item: #R9

SUMMARY:

Consideration of adoption of an Ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

BACKGROUND:

In order to provide state-of-the-art facilities for the Airport and to meet current environmental regulations, the Town of Addison has constructed a new fuel farm at Addison Airport. Airport Management recommends the Town of Addison adopt a new Division 2A to Chapter 14, Article III of the Town of Addison Code of Ordinances that requires all parties authorized to receive, store or dispense fuel of any kind at the Airport be issued an Addison Airport Fuel Farm License Agreement substantially in the form of Exhibit "A" to the Ordinance. Any person who holds and complies with the License shall be in compliance with the current requirements of Division 2 of Article II, Chapter 14 of the Code of Ordinances relating to a "fuel-dispensing permit". The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein it provides an annual fee for the use of a fuel tank, which is superseded by the terms and conditions of the new Addison Airport License Agreement.

A summary of the salient terms and conditions of the agreement are included in the attached memorandum from Bill Dyer, Airport Real Estate Manager. The city attorney has reviewed the proposed Ordinance and the License Agreement attached to the Ordinance as Exhibit "A".

RECOMMENDATION:

Staff recommends approval.

Attachments: Memorandum – Bill Dyer
Proposed Ordinance
Exhibit A – Fuel Farm License Agreement
Exhibit B - Survey – Addison Airport Fuel Farm
Exhibit C - Site Plan and Tank Capacity
Exhibit D – Term Extensions
Exhibit E – Statement of Licensor's Initial Construction Responsibility
Exhibit F – Licensee's Areas of Maintenance & Repair Responsibility



William M. Dyer
Real Estate Manager
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Suite 220
Addison, Texas 75001

Main: 972-392-4850
Direct: 972-392-4856
Fax: 972-788-9334
bill.dyer@staubach.com

To: Mark Acevedo, Director of General Services
From: Bill Dyer
Cc: Lisa Pyles
Date: March 17, 2006
Re: Addison Airport Fuel Farm License

Airport Management is pleased to submit to the Town of Addison for its consideration and adoption proposed Ordinance (the "Ordinance") amending Chapter 14 (Aviation), Article III (Municipal Airport) of the Town of Addison Code of Ordinances by adding Division 2A which, upon its adoption, requires that all parties authorized to receive, store or dispense fuel of any kind at the Airport must be issued a License by the City. Referenced as "Exhibit A" to the Ordinance is the form of the Addison Airport Fuel Farm License Agreement ("License Agreement") that sets forth the terms and conditions for operating at the Addison Airport fuel dispensing facility. The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein the annual fee of \$6,120.65 (\$510.05 per month) for the use of a fuel tank is superseded by the terms and conditions contained in the new License.

Airport Management recommends the Town of Addison adopt the attached Ordinance. The City Attorney has reviewed the Ordinance as presented.

Background Information

In April, 1987, the Town of Addison City Council approved Ordinance 087-017, which, as later modified, amended the Code of Ordinances by providing for the issuance of four types of aircraft fuel dispensing permits: 1) public, 2) nonpublic, 3) self-service and, 4) FAA Supplemental Type Certificate (STC Certified). In addition, holders of these permits

leased real property from Addison Airport to accommodate underground fuel storage tanks required for their fueling operations. In order to meet current environmental regulations, the Town of Addison has constructed a new fuel farm on the Airport. In consideration of this new facility the License Agreement was prepared, setting forth the terms and conditions under which licensees are to operate from the new fuel farm and on the Airport.

General Structure of the License Agreement

The Addison Airport Fuel Farm License Agreement (the “License” or “Agreement”) is the agreement by and between the Town of Addison and the public fixed base operators (FBO) or non-public fuelers authorized to receive and pump fuel at Addison Airport (currently self-service and STC Certified are not recognized at the Airport). The current City ordinance requires that an operator hold an aircraft fuels dispensing permit; under the proposed Ordinance, a person who holds and complies with a License will be deemed to have complied with the aircraft fuels dispensing permit requirement.

Considering the fact that the Town of Addison has dedicated Airport land for the specific purpose for erecting the new centralized fuel farm, has incurred all construction costs associated with the new facility, and has committed to be responsible for the ongoing maintenance of the facility, the License prohibits the License holder from bartering or using the facility as collateral. The Agreement grants the fueler a license to use designated fuel tanks and common facilities associated with the fuel farm for the specific purpose of receiving, storing and dispensing fuels used in connection with their approved (public or non-public fueling) aeronautical operations.

Summary of Salient Terms and Conditions of the Agreement

The License consists of 28 sections and six exhibits. Among its provisions, the Agreement provides for an initial 60-month term and four 5-year renewal options. The fueler may exercise the renewal options no earlier than 60 months or later than 180 days prior to the expiration of the term or any renewal period. By exercising a renewal option at the earliest opportunity, the licensee may, in effect, maintain the equivalent of a 10-year term up and until all options have been exercised.

Section 1 of the Agreement outlines three monetary components that constitute the consideration to be paid by the licensee: the “Base Fee”, “Additional Fee,” and “Fuel Flowage Fee.” Collectively, these fees are established with due regard to the property and improvements used and the expense of operation to the Airport.

- “Base Fee” is an annual fee paid in monthly installments and is calculated by multiplying the total gallon capacity of the fuel tanks for each licensee (being a portion of the total gallon capacity for the entire fuel farm) times the Base Fee rate specified in the Agreement. The Base Fee rate remains constant over the term (\$.2651 per gallon) but incrementally increases at the beginning of each renewal period as set forth in Exhibit D, provided the renewal options are exercised.
- “Additional Fee” is an annual fee paid in monthly installments together with the Base Fee. The Additional Fee may vary over the term similar to “additional rent” in a

commercial office lease and is intended to offset the variable operating and maintenance costs over the term or renewal period of the License Agreement. Because we do not have the benefit of actual operating history for the new Fuel Farm, an initial rate of \$.3290 per gallon has been established through September 2007. Prior to October 1, 2007, and at the beginning of each fiscal year thereafter, the Town will estimate its annual costs of operating the Fuel Farm for the ensuing year. The fueler will pay their proportionate share of these projected costs, but in no event less than the floor rate of \$.3290 per gallon. At the end of the fiscal year, the Town will provide each Fueler a statement reconciling the estimated costs paid to actual costs, issuing a credit or debit to the fueler's account accordingly.

- A "Fuel Flowage Fee" is assessed under the License which is identical to and a continuation of the fee currently required of fuelers under the current permit. The fee is paid each month in arrears, and is based upon the actual quantity of fuel received for the preceding month multiplied by the prevailing Fuel Flowage Rate established by the Town (currently \$.12 per gallon received) which may be modified from time to time.
- "Quarterly Minimum Gallons Received" is the minimum amount of fuel that the fueler must receive at the Airport during any three consecutive calendar month period over the term of the License in order to continue the privilege of using the Fuel Farm. Based upon the historical performance of the fuelers at Addison Airport, Airport Management recommends this minimum performance standard to be 390,000 gallons (average of 130,000 gallons/month) for public and non-public operators over any three-month period. The new Fuel Farm is regarded as a valuable asset to the Airport intended to provide first-class support for ongoing aeronautical activities and to generate revenue for the Airport. Should the City give written notice to the licensee of the licensee's failure to fulfill the minimum volume requirements over a three month period, and if the licensee then fails to make up this deficiency (in addition to the minimum requirements) over the subsequent three month period, the City may terminate the licensee's rights and substitute another fueler in their place.

Example Given of Typical Fee (the "Consideration") Calculation

Given the Base Fee and Additional Fees described above and in the Agreement, the cost to the typical public fueler (an "FBO") is as follows:

Tank #	Tank Permitted Use	Total Tank Capacity	% Of Total Fuel Farm Combined Capacity
#01	Jet A	25,000	7.937 %
#02	Jet A	25,000	7.937 %
#03	100LL	15,000	4.762 %
Total		65,000	20.635 % *

Table from Section 1.1(j) of the License

** Difference Due To Rounding*

- 1) Assume for purposes of this example that the License includes two 25,000 gallon Jet-A tanks and one 15,000 gallon Avgas tank, the fueler has a Total Tank Capacity of 65,000 gallons or a proportionate share of 20.635% of the entire Fuel Farm facility (total

combined fuel farm tank capacity is 315,000 gallons). This percentage is used to determine the fueler's pro-rata share of the estimated and actual costs included as Additional Fees.

Also assume that the Licensee received 140,000 gallons of fuel for the previous month. Finally, assume that the Airport's total estimated costs to maintain, manage and, insure the fuel farm plus reasonable allowance for replacement reserves for the fiscal year is \$103,635.

Cost Category	Estimate Fiscal Year 2006 – 2007 Costs
Management	\$13,638.37
Maintenance	\$21,815.17
Insurance	\$14,011.45
Replacement Recovery Allowance	\$54,170.01
Total Additional Fees	\$103,635

2) Based on the above, the monthly consideration for the License is as follows:

(a) the fueler's Base Fee is \$17,231.50 ($\$0.2651 \times 65,000$ gals.) payable in twelve monthly installments of \$1,435.96. This amount will remain constant over the term but will increased incrementally at the beginning of each renewal period; and

(b) the fueler's Additional Fees are \$21,385.08 (\$1,782.09/mo.) calculated by multiplying the total qualifying operating costs for the fuel farm including an allowance for reserves times the fueler's proportionate share calculated above ($\$103,635 \times 20.635\%$); and

	Estimate Fiscal Year 2006 – 2007 Costs	Fuelers Estimated Additional Fees @ 20.635%
Management	\$13,638.37	\$ 2,814.28
Maintenance	\$21,815.17	\$ 4,501.56
Insurance	\$14,011.45	\$ 2,891.26
Replacement Recovery Allowance	\$54,170.01	\$11,177.98
Total Additional Fee	\$103,635.00	\$21,385.08 (\$0.329/gal cap.)

(c) the Fuel Flowage Fee is paid each month in arrears, based upon actual quantities recorded by the fueler during the previous calendar month. The Fuel Flowage Fee rate, currently \$.12/gallon, is adopted by the Town of Addison. In this example, the fueler's fuel flowage fee is \$16,800 (140,000 gallons x \$.12).

In the example given, the fueler's *total monthly consideration* to be paid to the Town of Addison in this example is \$20,018.14.

PAYMENT IN ADVANCE	Monthly
Base Fee (\$.2651 x 65,000 gals.) (Section 1.1(m) and 4.3)	\$1,435.96
Additional Fees ((\$103,635 x 20.635%)/12mos.) (Section 1.1.(n) and 4.4.)	\$1,782.09
Subtotal of Payment In Advance (due beginning of the month)	\$3,218.05
PAYMENT IN ARREARS:	
Fuel Flowage Fee (\$0.12 x 140,000 gals.)	\$16,800
Total Monthly Consideration	\$20,018.05

Table from Section 1.2

Example of Estimating Replacement Reserve Component of Additional Fees Per Sections 4.5, 4.6 & 4.8

Fuel Tanks		
Replacement Reserve Allowance Calc.		
Typical Tank Total Useful Life In Months	300	
Estimated Ave. Tank Remaining Useful Life	288	
Cost To Replace Today (Tanks Only)	\$ 1,041,585	100%
Less Accumulated Reserves	\$ (41,600)	4%
Tank Reserve Requirement	\$ 999,984.24	96%
Divided by remaining useful life in months	281	
Monthly Installment	\$ 3,472	
Annual Installment	\$ 41,666	
Per gallon (\$41,666/315,000 gals.)	\$ 0.13	
Canopy System		
Canopy System typical Useful Life In Months	120	
Estimated Ave. Tank Remaining Useful Life	108	
Cost To Replace Today	\$ 125,000	100%
Less Accumulated Reserves	\$ (12,500)	10%
Tank Reserve Requirement	\$ 112,500	90%

Divided by remaining useful life in months	108	
Monthly Installment	\$ 1,042	
Annual Installment	\$ 12,504	
Per gallon (\$12,504/315,000 gals.)	\$ 0.04	
Total Annual Reserve Requirement	\$ 54,170.01	
Per Gallon (\$54,170.01/315,000 gals.)	\$ 0.17	

Licensors' & Licensee's Obligation to Maintain the Fuel Farm and Fuel Tanks

Under the License, the Town of Addison will maintain, repair, and replace the Fuel Farm systems and Fuel Tanks, except for what is characterized to be the fueler's responsibilities outlined in Sections 9, 15 and 16 of the Agreement. Generally, the fueler will be responsible, at its sole expense, to maintain, repair, and replace, as required, all fuel loading and unloading hoses, couplings, swivels and any other device used in connection with and between the Fuel Tank's hose flange and their fuel trucks. The fueler is responsible for the continued maintenance and replacement of all filters, separators or other filtering medium, or such devices specified by the Town in connection with fueler's use of the Fuel Tanks. Additionally, a fueler is responsible, at the fueler's sole expense, for all contents deposited, stored, and discharged from the Fuel Tanks including, but not limited to approved fuels, waste, discharge or spoils as a result of the fueler's use of the Fuel Tanks.

Insurance:

The Town of Addison is to procure and maintain standard fire and extended coverage and liability insurance typically available to municipalities for such purposes in the State of Texas. The cost of this insurance is a qualified pass-through expense to be included among Additional Fees.

Separate from the above, each license holder is required to procure and maintain without interruption a policy or policies of insurance, at its sole costs and expense, to meet or exceed the requirements specified in the prevailing Airport Minimum Standards.

Regulations:

Given the technical nature of the fueling operations to be carried out at the new Fuel Farm and elsewhere on the Airport, the Town of Addison and the fuelers are subject to various federal, state, county and municipal laws, orders, rules, directives and regulations that governs the conduct of the parties accordingly. Among these various regulations:

- The Town of Addison, Code of Ordinances
- "Addison Airport Rules and Regulations" as amended or modified

- “Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers” (the “Minimum Standards”) which may be amended or modified from time to time
- The license holder acknowledges that the Town is bound by the terms and conditions of any and all FAA, TxDOT, or other grant agreements, grant assurances or regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future.
- The U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention* governs the conduct of the parties under the License.
- The National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing* governs the conduct of the parties under the License.

Conclusion & Recommendation:

In order to provide state-of-the-art facilities for the Airport and to meet current environmental regulations, the Town of Addison has constructed a new fuel farm at Addison Airport. Airport Management recommends the Town of Addison adopt a new Division 2A to Chapter 14, Article III of the Town of Addison Code of Ordinances that requires all parties authorized to receive, store or dispense fuel of any kind at the Airport be issued an Addison Airport Fuel Farm License Agreement substantially in the form of Exhibit “A” to the Ordinance. Any person who holds and complies with the License shall be in compliance with the current requirements of Division 2 of Article II, Chapter 14 of the Code of Ordinances relating to a “fuel-dispensing permit”. The proposed Ordinance also repeals and deletes Division 4 of Article III, Chapter 14, including Section 14-110 wherein it provides an annual fee for the use of a fuel tank, which is superseded by the terms and conditions of the new Addison Airport License Agreement.

The Town’s attorney has reviewed the proposed Ordinance and the License Agreement attached to the Ordinance as Exhibit “A”.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 14 (AVIATION), ARTICLE III (MUNICIPAL AIRPORT) OF THE CODE OF ORDINANCES BY ADDING A NEW DIVISION 2A. REGARDING A FUEL LICENSE FOR THE RECEIPT, STORAGE AND DISPENSING OF FUEL AT ADDISON AIRPORT; REPEALING AND DELETING DIVISION 4 (AIRPORT FUEL FARM FACILITIES) OF THE SAID ARTICLE III, CHAPTER 14, INCLUDING SECTION 14-110, OF THE CODE OF ORDINANCES REGARDING AN ANNUAL FEE FOR A FUEL TANK; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. Chapter 14 (Aviation), Article III (Municipal Airport) of the Code of Ordinances (the "Code") of the Town of Addison, Texas (the "City") is hereby amended in the following particulars, and all other chapters, articles, divisions, sections, sentences, phrases and word of the said Code are not amended hereby:

A. The Code is amended by adding to Chapter 14, Article III thereof a new Division 2A. to read as follows:

DIVISION 2A. FUEL LICENSE

Section 14-95. Definitions.

Airport means Addison Municipal Airport located within the City.

Airport Manager means the manager of the Airport designated by the City (whether designated pursuant to an agreement between the City and a third party or otherwise).

City means the Town of Addison, Texas.

City Manager means the City Manager of the City.

Fuel Farm means the fuel storage and dispensing facility located on the Airport and as described in Section 14-96.

License means the Addison Airport Fuel Farm License Agreement, the form of which is attached as Exhibit A to Ordinance No. _____ of the City and incorporated herein for all purposes by this reference.

Person or Persons means an individual, assumed name entity, partnership, joint venture, association, limited liability company, corporation, or any other entity whatsoever, but excluding the City, its contractors, agents, and representatives.

Section 14-96. Background.

There is located at the Airport a fuel storage and dispensing facility constructed by or for the City, which consists of and includes above-ground fuel storage tanks, related equipment and appurtenances, and certain adjacent premises for the common use of persons having the right to use the facility. Such facility is referred to in this Division as the "Fuel Farm." The Fuel Farm is anticipated to be opened and operating in 2006, and replaces a fuel farm or fuel storage and dispensing facility located on another portion of the Airport. Except as may be otherwise authorized by the City, the Fuel Farm is the only location at the Airport where fuel may be received, stored, or dispensed.

Section 14-97. License.

No person may receive, store, or dispense fuel of any kind whatsoever at the Fuel Farm or any other portion of the Airport without a License issued by the City. The form of License may be adjusted from time to time by the City by and through its City Manager. The City Council finds that the charges, rentals and fees set forth in this Article III, this Division, and the License are reasonable and uniform for the same class of privilege or service and are established with due regard to the property and improvements used and the expenses of operation to the City.. A License shall be issued in accordance with minimum standards adopted from time to time by the City or the Airport Manager. Any person who holds and complies with a License issued by the City shall be deemed to be in compliance with the requirements of Division 2 of this Article III, Chapter 14 of the Code of Ordinances relating to a fuel dispensing permit, provided, however, that the requirement for the payment of a fuel flowage fee under Division 2 of this Article III (as set forth in the form of aircraft fuels dispensing permit incorporated by reference therein) shall continue in full force and effect. Any License issued under this Division 2A shall be conditioned on and shall specifically include or incorporate the requirement for a fuel flowage fee to be paid in accordance with Division 2 of this Article III.

B. The Code is further amended by deleting and repealing in its entirety Division 4 of Article III, Chapter 14, which Division is entitled "Airport Fuel Farm Facilities", including deleting and repealing in its entirety Section 14-110 relating to fuel tank lease rates:

~~DIVISION 4. AIRPORT FUEL FARM FACILITIES~~

~~Section 14-110. — Rates and Fees. For that area of Addison Airport which is designated as the fuel facility or fuel farm, the annual rate or fee to lease a fuel tank from the town shall be \$6,120.65 (\$510.05 per month).~~

Section 2. Savings. This Ordinance shall be cumulative of all other ordinances, including, without limitation, the Code of Ordinances of the Town of Addison, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct and irreconcilable conflict with the provisions of this Ordinance.

Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall become effective from and after its date of passage and publication as provided by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ____ day of _____, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney



Addison Airport

Fuel Farm License Agreement

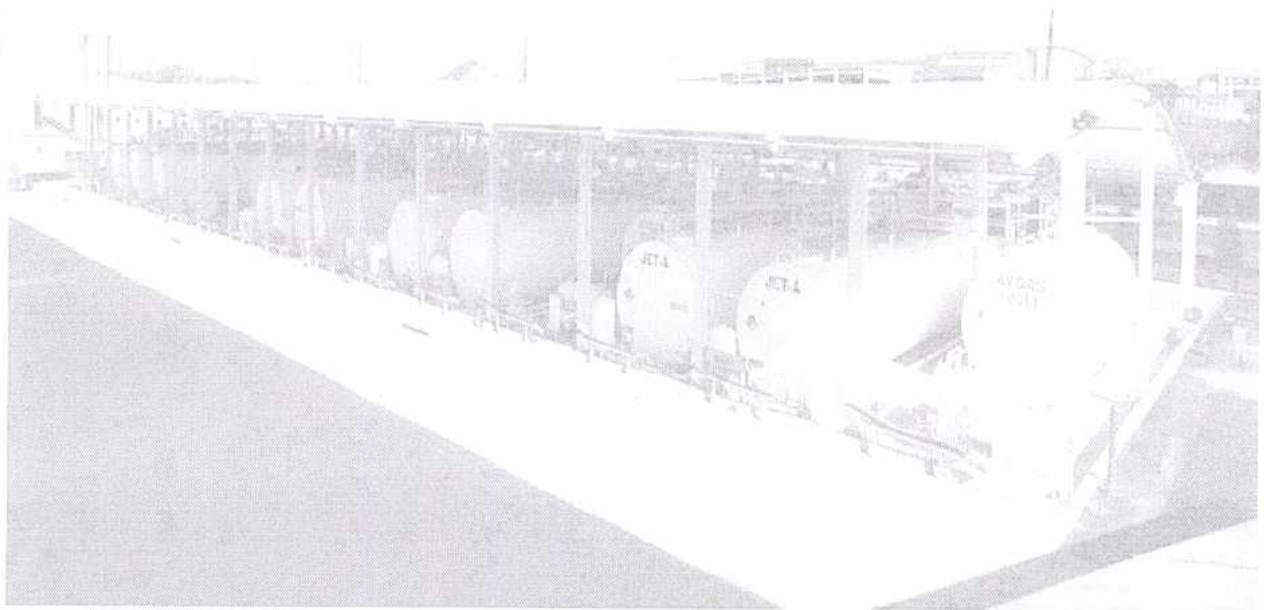


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ADDISON AIRPORT FUEL FARM LICENSE AGREEMENT

SECTION 1

DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this License Agreement ("**License**" and "**Agreement**" are interchangeably used herein to mean one and the same):

- (a) "**Licensor**": **TOWN OF ADDISON**, a Texas home-rule municipality.
- (b) Licensor's Address: 5300 Belt Line Road, Dallas, Texas 75254.
- (c) "**Manager**": Washington Staubach Addison Airport Joint Venture
- (d) Manager's Address: 16051 Addison Road, Suite #220, Addison, Texas 75001
- (e) "**Licensee**": _____
- (f) Licensee's Address: _____
 Primary Contact: _____ Phone Number: _____
- (g) Licensee's Trade Name: _____
- (h) Licensee's Guarantor (if applicable, attach Guaranty as an exhibit): _____
- (i) "**Fuel Farm**": Licensor's property located in the Town of Addison, Dallas County, Texas, which property is described on Exhibit "A" and shown on Exhibit "B" attached to this License. With regard to Exhibits "A" and "B", the parties agree that they are attached solely for the purpose of depicting the location of the Fuel Farm and the Fuel Tanks within the Fuel Farm and that no representation, warranty, or covenant is to be implied by any information shown on such exhibits.
- (j) "**Fuel Tanks**": The _____ () above-ground storage tanks, together with all equipment attached thereto necessary for Licensee's use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on Exhibit "C" attached hereto, with a stipulated combined capacity of _____ gallons ("**Total Licensee Gallon Capacity**") of fuel, also being known as

Tank #	Designated Fuel Type	Licensee Gallon Capacity	% Of Total Fuel Farm Combined Capacity
#			%
#			%
#			%
#			%
Total			% **

** The "**Licensee's Proportionate Share**", calculated accordance with Section 4.10, on the Commencement Date is established to be _____ Percent (____ %).

- (k) "**Commencement Date**": The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks; or (ii) _____.

- (l) **"Term"**: The period of time commencing on the Commencement Date and continuing until the last day of the calendar month sixty (60) months from the Commencement Date or the last month of any properly exercised Term Extension (as described in Exhibit "D" attached hereto), whichever is later (i.e., if Commencement Date is March 10, 2006, the Term shall then expire no later than March 31, 2011 if no Term Extension is exercised).
- (m) **"Base Fee"**: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$0.2651** per gallon, payable in equal monthly installments as provided for in Section 4.
- (n) **"Additional Fee"**: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$0.3290** per gallon, payable in equal monthly installments as provided for in Section 4.
- (o) **"Fuel Flowage Fee"**: Consideration for this License to receive and dispense aircraft fuel, equal to the Fuel Flowage Rate (as defined in Section 7.1 of this License) for each gallon of aviation fuel received by Licensee during the Term, payable in monthly installments as provided for in Section 7.
- (p) **"Security Deposit"**: \$ _____. Such Security Deposit is due and payable upon execution of this License and held on account on behalf of Licensee by Licensor in accordance with Section 28.4.
- (q) **"Permitted Use of Fuel Tanks"**: Exclusively for the storage of fuel in support of aeronautical operations of type and grade approved in writing by Licensor in the capacity of a:
(Check only one)
 - ☐ **Public Fixed Based Operator** for retail delivery into aircraft at the Airport, for delivery into aircraft at the Airport owned, leased or otherwise operated by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations at the Airport and for no other purpose, except for any such delivery to aircraft of holders of valid off-airport access permits or as otherwise approved in writing by Licensor.
 - ☐ **Non-public Operator** with delivery to aircraft owned or leased by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations and for no other purpose.
- (r) **"Airport"**: The Addison Airport situated in the Town of Addison, Dallas County, Texas.
- (s) **"Quarterly Minimum Gallons Received"**: _____ gallons of aviation fuel (excluding diesel and mobile fuel), as described in Section 7.7.
- (t) **"Includes"** and **"including"**, for purposes of this Agreement, are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

1.2 The following chart is provided as an estimate of Licensee's monthly and annual payment to Licensor as Consideration (as defined in Section 4.1). This chart, however, does not supersede the specific provisions contained elsewhere in this License.

PAYMENTS IN ADVANCE:	Annual	Monthly
Base Fee (Section 1.1(m) and 4.3)	\$ _____	\$ _____
Additional Fee (Section 1.1(n) and 4.4)	\$ _____	\$ _____
Subtotal of Payments in Advance	\$ _____	\$ _____
PAYMENT IN ARREARS:		
Fuel Flowage Fee \$0.12 x _____ total gallons received during the preceding month (Section 7).	\$ <u>TBD</u>	\$ <u>TBD</u>
TOTAL MONTHLY CONSIDERATION (Payment In Advance plus Payment In Arrears)	\$ <u>TBD</u>	\$ <u>TBD</u>

SECTION 2

GRANTING CLAUSE

2.1 Licensor licenses the Fuel Tanks to Licensee, subject to and only upon the terms and conditions set forth in this License and further subject to all laws, codes, ordinances, rules, standards, policies, permits, and regulations now in effect or hereafter adopted, modified, or amended by Licensor or any governmental or quasi-governmental authority having jurisdiction over the Airport or any part thereof, and all requirements, conditions, and standards of any Airport grant or funding or any grant agreements or grant assurances of the Airport now in effect or as hereafter agreed to, adopted, issued, modified, amended, or established. This License is not a lease and grants no interest or estate in the Fuel Farm, including, without limitation, any leasehold interest.

SECTION 3

DELIVERY OF PREMISES

3.1 BY ACCEPTANCE OF THIS LICENSE, LICENSEE HEREBY AGREES THE FUEL FARM IS BEING DELIVERED TO LICENSEE IN GOOD WORKING CONDITION AND UNDERSTANDS THAT THE FUEL TANKS ARE BEING LICENSED TO LICENSEE, ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS, WITH LICENSEE ACCEPTING ALL DEFECTS, IF ANY AND LICENSOR MAKES NO REPRESENTATIONS (OTHER THAN AS TO LICENSOR'S OWNERSHIP OF THE FUEL FARM), WARRANTIES OR COVENANTS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE FUEL FARM FOR A PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO (AND LICENSOR HEREBY EXPRESSLY DISCLAIMS THE SAME), ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS HAD THE OPPORTUNITY TO INSPECT THE FUEL FARM, AND THAT ANY SUCH INSPECTION HAS BEEN ADEQUATE TO ENABLE LICENSEE TO MAKE LICENSEE'S OWN DETERMINATION REGARDING THE SUITABILITY OR FITNESS OF THE FUEL TANKS AND FUEL FARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE) RESULTING OR ARISING FROM OR RELATING TO THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE FUEL FARM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY HEREIN AGREED AND CONSENTED TO BY LICENSOR.

3.2 Licensor shall have the right upon ninety (90) day's prior written notice, to relocate Licensee to another Fuel Tank or Fuel Tanks (the "Replacement Fuel Tank(s)") in the Fuel Farm as Licensor deems, at its sole discretion, to be reasonably necessary. In the event of such relocation, the cost of relocating Licensee and the cost

of altering the Replacement Fuel Tanks to make them comparable to the current Fuel Tanks shall be borne by Licensor (except for those alterations or improvements made to the Fuel Tanks by Licensee with or without Licensor's prior consent). If Licensor exercises such right of relocation, this License shall continue in full force and effect without any change to the terms or other conditions, except that the Replacement Fuel Tanks shall be deemed substituted in Section 1.1(j) and an appropriate adjustment shall be made to the amount of the Consideration and any Security Deposit.

SECTION 4

PAYMENT OF BASE FEE AND ADDITIONAL FEE

4.1 The Base Fee and all other sums or charges payable by Licensee, including but not limited to Additional Fee and Fuel Flowage Fees and other fees required by this License, are sometimes herein referred to collectively as "**Consideration**". All payments of Consideration are to be paid by corporate, personal or cashier's check or money order. Payments of Consideration are not to be made in cash. The Licensor shall have the same remedies in the case of a default in the payment of Additional Fee and Fuel Flowage Fees and any other Consideration as are available to Licensor in the case of a default in the payment of the Base Fee.

4.2 The Consideration shall be payable to Licensor at Licensor's address set forth in Section 1.1(b) or, such other address designated by Licensor with prior written notice given to Licensee. Consideration shall not be considered paid until actually received by Licensor or Licensor's designee.

4.3 Beginning with the Commencement Date and continuing throughout the Term of this License, Licensee shall pay an annual Base Fee in the amount specified in Section 1.1(m), which Base Fee shall be paid by Licensee (separately or together with other Consideration due and payable) in equal monthly installments as required herein, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Base Fee installment of such partial month as provided for under this Section 4.3 shall be prorated and such installment or installments so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Base Fee).

4.4 In addition to the Base Fee and any other Consideration required under this License, Licensee shall pay an Additional Fee which is to be assessed by Licensor annually for each fiscal year of Licensor, but said amount shall never be less than that specified in Section 1.1(n).

4.5 The Additional Fee payable by the Licensee under this License shall be equivalent to Licensee's Proportionate Share of Licensor's cost of operating and maintaining the Common Area and the Replacement Recovery Allowance provided for under Section 4.6. Such costs, hereinafter referred to as the "**Common Area Charge**", may include but not be limited to: all utilities which serve the Fuel Farm including water, sewer, electricity, gas and data/tele-communications; all systems and system components necessary and appurtenant to the operation of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, safety systems, separators, auxiliary power supply); structural systems including roof and canopy repair and maintenance; the costs of any third-party service agreement which may include the repair, maintenance and inspection of the Fuel Farm and any of its systems and system components; painting, cleaning, sweeping, landscaping, inspecting, repairing and replacing the Fuel Farm or any portion thereof; Licensor's reasonable overhead costs for administration and management; and the cost of any Real Estate Charges or Insurance Expenses for which Licensor is not reimbursed pursuant to Section 5, but specifically excluding all expenses paid or reimbursed by Licensee to Licensor pursuant to Section 6.

4.6 Licensor and Licensee agree that Licensor may include in the Additional Fee a reasonable reserve sufficient to pay the costs of the future replacement of the Fuel Tanks and Roofing System (the "**Replacement Recovery Allowance**"), which costs are to be amortized over a twenty-five (25) year and ten (10) year useful lifespan, respectively. Licensor, in its sole discretion, may adjust the monthly amount collected from Licensee for the Replacement Recovery Allowance from time to time to coincide with the industry's generally accepted replacement values for fuel tanks and roofing systems comparable to the Fuel Tanks and Roofing System.

4.7 If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee for such partial month shall be pro-rated and paid in advance similarly as provided for the Base Fee under Section 4.3.

4.8 Prior to the commencement of Licensors fiscal year beginning October 1, 2007 and prior to the commencement of each fiscal year of Licensors thereafter, Licensors shall provide Licensee an estimate of the Additional Fee for such fiscal year. The Additional Fee shall be due and payable by Licensee (separately or together with other Consideration due and payable) in equal monthly installments during such fiscal year, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on the Commencement Date, and subsequent installments, as adjusted for each fiscal year during the Term, shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee installment of such partial month as provided for under this Section 4.8 shall be prorated and such installment so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Additional Fee).

4.9 Within one hundred twenty (120) days following the conclusion of the Licensors fiscal year ending September 30, 2008, and within one hundred twenty (120) days following the conclusion of each fiscal year of Licensors thereafter, or as soon thereafter as reasonably possible, Licensors shall furnish to Licensee an itemized statement reconciling the actual Common Area Charge and other costs for that fiscal year (or part thereof during the Term of this License) against the Additional Fee for such fiscal year or partial fiscal year. Within thirty (30) days of the delivery of such statement to Licensee, Licensee shall pay to Licensors the Licensee's Proportionate Share of the positive difference, if any, resulting from subtracting the Additional Fee paid by Licensee for such fiscal year from the Licensee's Proportionate Share of the actual Common Area Charge and other costs for such fiscal year. If such Additional Fee paid by Licensee exceeds Licensee's Proportionate Share of such Common Area Charge and other costs for such fiscal year or partial fiscal year, Licensors shall have the right, at its option, to credit such excess against the next accruing payment(s) of the Additional Fee due under this License or return such excess to Licensee.

4.10 The Licensee's Proportionate Share is that percentage, at the time when the applicable cost was incurred, determined by dividing the Total Licensee Gallon Capacity by the combined capacity of the fuel tanks in the Fuel Farm, as reasonably determined by Licensors. Licensee's Proportionate Share on the Commencement Date is stipulated by the parties in Section 1.1(j).

4.11 The amount of the actual Common Area Charge and other costs determined by Licensors under Section 4.9 shall be final, conclusive and binding upon the parties hereto on the date which is one hundred-eighty (180) calendar days following the date Licensors provides such itemized statement of reconciliation to Licensee.

4.12 In the event any Consideration due is not actually received by Licensors by the fifth (5th) day after such amount is due, or if any Consideration payment is made by check, which check is returned for insufficient funds, then in addition to the past due amount, immediately on Licensors demand, Licensee shall pay to Licensors one of the following (the choice to be at the sole option of Licensors unless one of the choices is improper under applicable law, in which event the other alternative, if proper under applicable law, will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of such late Consideration, in order to compensate Licensors for its administrative and other overhead expenses; or (b) interest on such late Consideration then due at the maximum rate of interest which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month), such interest to accrue continuously on any unpaid balance of such Consideration due to Licensors by Licensee during the period commencing with the due date of such late Consideration and terminating with the date on which Licensee makes full payment of all such late Consideration. Any such late charge or interest payment shall be payable immediately on demand as additional Consideration. It is hereby agreed that in no event shall any charges permitted under this License, to the extent the same are considered to be interest under applicable law, ever exceed the maximum lawful rate of interest allowed under applicable law.

4.13 If Licensors fails to receive from Licensee any installment of Base Fee or Additional Fee within ten (10) days after the same is due for any two (2) consecutive calendar months, or if the payment of any Consideration is made by check, which check is returned for insufficient funds twice within any consecutive twelve (12) month period, Licensors may, by giving written notice to Licensee, and in addition to any late charge or interest accruing pursuant to Section 4.12 above, as well as any other rights and remedies accruing pursuant to Section 20 or Section

22 below, or any other provision of this License, at law or in equity, require subsequent Base Fee and Additional Fee installments to be paid quarterly in advance by cashier's check or money order and the delivery of Licensee's corporate or personal check will no longer constitute a payment of such Consideration. Any acceptance of a corporate or personal check for such Consideration shall not be construed as a subsequent waiver of said right to require payment by cashier's check or money order.

4.14 The obligation of Licensee to pay Consideration shall survive the expiration or earlier termination of this License.

SECTION 5

LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES

5.1 Licensee shall be liable for all taxes, if any, levied against personal property owned by Licensee and placed within or used by Licensee within the Fuel Farm. If any personal property taxes are validly levied against Licensor or Licensor's property and Licensor pays the same, such taxes shall be included in the Common Area Charge.

5.2 If any Real Estate Charges (as defined below) are validly levied against Licensor or Licensor's property and Licensor pays the same, such Real Estate Charges shall be included in the Common Area Charge. All Insurance Expenses (as defined below) related to the Fuel Farm or Licensor's ownership of the Fuel Farm shall be included in the Common Area Charge. "**Real Estate Charges**" shall include, if any, ad valorem taxes, general and special assessments, any tax or excise on fees including Consideration, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge which replaces any of such above-described Real Estate Charges; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. "**Insurance Expenses**" shall include all premiums and other expenses incurred by Licensor for liability insurance, and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Licensor, in Licensor's sole discretion, may consider appropriate) and the amount of any deductible paid by Licensor in connection with any claim thereunder.

SECTION 6

COMMON AREA OF THE FUEL FARM

6.1 The term "**Common Area**" is defined for all purposes of this License as that part of the Fuel Farm which is maintained by Licensor, the expense of which may be incurred by Licensor and included as Common Area Expenses as provided for in Section 4.5, intended for the common use of all licensees of the Fuel Farm and other authorized persons. The Common Area includes all systems that comprise the Fuel Farm and are appurtenant thereto including but not limited to all utilities (water, sewer, electricity, gas and data/tele-communications); all systems and system components necessary to the operation and function of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, life and safety systems, separators, auxiliary power, lights, switches, meters, tanks), building infrastructures, parking areas, driveways, landscaping, curbs, loading area, lighting facilities, roofs and the like. Licensor reserves the right to change from time to time the rights and interests to, and the dimensions and location of, the Common Area, as well as the rights and interests to and the dimensions, identities, locations and types of any improvements in the Fuel Farm.

6.2 Licensee shall have the nonexclusive right to use the Common Area as constituted from time to time for the purpose or purposes described in Section 1.1(q), such use to be in common with Licensor, other licensees in the Fuel Farm and other authorized persons subject to such reasonable rules and regulations governing use as Licensor may from time to time prescribe.

SECTION 7

FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES

7.1 As additional Consideration under this License, Licensee shall pay to Licensor the Fuel Flowage Fee at the Flowage Fee Rate. The "Flowage Fee Rate" (herein so called) is twelve cents (\$0.12) for each gallon of aviation fuel received by Licensee at the Airport during the Term, excluding any fuel not intended for aeronautical use (i.e.,

diesel and mobile fuel used in connection with ground support operations) during the Term; provided, however, the Town of Addison, Texas reserves the right to increase or decrease the Flowage Fee Rate as, in its sole discretion, may be necessary or reasonably appropriate. This License is conditioned upon the payment of the Fuel Flowage Fee at the Flowage Fee Rate, and such payment is required as set forth in and in accordance with Chapter 14, Article III, Division 2 of the Code of Ordinances of the Town of Addison, Texas (as the same may be amended or superseded). Licensors and Licensee herein agree and acknowledge that any payment made by Licensee of said Fuel Flowage Fee required hereunder is in satisfaction of the Fuel Flowage Fee at the Flowage Fee Rate established by the City Council of the Town of Addison, Texas. Licensors shall give Licensee at least thirty (30) days prior written notice before any change in the Flowage Fee Rate becomes effective.

7.2 The Fuel Flowage Fee shall be paid, with respect to each calendar month during the Term beginning with the month in which the Commencement Date occurs, on or before the fifth (5th) day of the calendar month following such month, without offset or deduction of any nature, at a sum equal to the product of the applicable Flowage Fee Rate multiplied by the total amount of fuel received at the Airport by Licensee during the preceding full or partial calendar month.

7.3 Licensee shall submit to Licensors with each monthly payment of the Fuel Flowage Fee, but in no event later than the fifth (5th) day of each month during the Term, a monthly fuel report (the "**Monthly Report**"), certified as being true and correct by a duly authorized representative of Licensee, showing for the preceding calendar month the amount of fuel received, sold or dispensed.

7.4 On or before the sixtieth (60th) day after the expiration of each calendar year, and the thirtieth (30th) day after the expiration or termination of this License, Licensee shall deliver to Licensors an annual fuel report (the "**Annual Report**"), certified as being true and correct by an authorized representative of Licensee, showing the amount of aviation fuel received, sold or dispensed during the calendar year preceding the date on which the Annual Report is due. In the event any provision of this License or the enforcement thereof by the Licensors, requires accounting of the Fuel Flowage Fee and the payment thereof for a period less than twelve (12) months, such shorter period shall be treated as one (1) year for the purpose of an Annual Report, and such Annual Report shall be delivered to Licensors within thirty (30) days after termination of such shorter period.

7.5 In addition to the information described in Section 7.4, each Monthly Report and each Annual Report shall include any and all additional information required by Licensors, and shall be in the form established by Licensors (which form may be modified, revised, or amended by Licensors in its sole discretion at any time). Each of the Monthly Reports and the Annual Reports are hereinafter referred to as a "**Fuel Report**." In the event Licensors is not satisfied with any Fuel Report provided by Licensee, Licensors shall have the right to cause its auditors or designated representative to inspect Licensee's books and records, wherever located, evidencing and accounting for all aviation fuel received, sold or dispensed in or from the Airport for the reporting period or periods in question. Licensee hereby agrees to make available all books and records, including but not limited to its bills of lading, general ledgers, bank accounts and fuel sales receipts available for inspection during Licensee's normal business hours within five (5) days upon receipt of written demand by Licensors. If it is determined by the auditors that the amount of fuel received, sold or dispensed during such period(s) is understated by more than two percent (2%), the reasonable expense of such audit shall be borne by Licensee. Licensee shall promptly pay to Licensors any deficiency, or Licensors shall promptly refund to Licensee any overpayment, as the case may be, which is established by such audit.

7.6 If Licensee fails to prepare and deliver promptly any Fuel Report or other document required under this License, Licensors may, in addition to exercising any of the remedies provided to Licensors under this License or any law, rule, or regulation, engage a Certified Public Accountant to make an audit of all books and records of Licensee, including (without limitation) Licensee's bank accounts, which in any way pertain to or show the aviation fuel received, sold or dispensed and prepare the Fuel Report or other document that Licensee failed to prepare and deliver to Licensors. The Fuel Report or other document prepared by such Certified Public Accountant shall be conclusively binding on Licensee, and Licensee shall pay upon demand all expenses of the audit and other services in regard to preparing such Fuel Report or other document.

7.7 Licensee shall receive at the Fuel Farm and deposit into the Fuel Tanks at least the Quarterly Minimum Gallons Received (as defined in Section 1(s)) during each three (3) consecutive month period during the Term; provided, however, that such failure shall not constitute an event of default under this License if, within the three (3) consecutive calendar months after Licensee receives written notice of such failure by Licensors, Licensee receives at the Fuel Farm and deposits into the Fuel Tanks the fuel deficiency resulting from such failure (in addition to the

Quarterly Minimum Gallons Received for such three (3) consecutive calendar months). The thirty (30) day cure period in Section 20.1(b) shall not apply to Licensee's obligations under this Section 7.

SECTION 8

USES AND CARE OF THE FUEL FARM

8.1 Licensee shall commence all of its fueling operations at the Fuel Farm on or immediately after the Commencement Date and shall perform such operations in a commercially reasonable manner so as to produce the maximum amount of sales from the Fuel Tanks.

8.2 Licensee shall not use the Fuel Farm or the Fuel Tanks for any purpose other than the purpose authorized by Section 1.1(q). Licensee, without Licensor's prior written consent, shall not store anything in the Fuel Tanks, other than the designated fuel type and grade of fuel authorized in Section 1.1(j), or use the Fuel Farm for any purpose which creates a risk of release of toxic or otherwise Hazardous Substances or increases the insurance premium cost for the Fuel Farm or the Airport or invalidates any insurance policy carried on the Fuel Farm or the Airport, other than the ordinary risk associated with the prudent use of any substantially similar aircraft fuel farm. All fuel kept, stored or maintained in the Fuel Tanks by Licensee, and all other property of Licensee that is maintained or used at the Fuel Farm shall be delivered, kept, stored, maintained, transported, dispensed and otherwise used at Licensee's sole risk. Without limiting the generality of the foregoing, Licensee covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of Licensee's owners, officers, employees, agents, contractors or other representatives, or any other person for whom Licensee may be responsible or liable (Licensee, together with such other persons and entities being sometimes hereinafter collectively referred to as "Licensee Parties"), to cause, directly or indirectly, any release or discharge of any Hazardous Substances (as defined in Section 8.4) at the Fuel Farm or any other portion of the Airport or premises adjacent thereto. Without limiting the generality of the foregoing, Licensee further covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of the Licensee Parties to, bring into, maintain upon, generate, use, store, dispense or dispose of any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto, unless such Hazardous Substances are maintained upon, generated, used, stored, dispensed or disposed of only (a) in such quantities as are reasonably necessary for Licensee's operations, (b) in accordance with the standards and instructions of the producer and distributor of such Hazardous Substances and, if fuel, the manufacturer of the Fuel Tanks and in compliance with all applicable laws, and (c) in such a manner as would prevent a release or discharge thereof in violation of applicable laws. Upon request of Licensor at any time, Licensee shall provide Licensor with a written list, certified to by Licensee in writing, identifying any Hazardous Substances then maintained upon, generated, used, stored, dispensed or disposed of at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto by Licensee and the approximate quantity of same, together with a representation that neither Licensee nor any other Licensee Parties have released or discharged any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or adjacent premises in violation of these provisions, all certified as being true and correct by a duly authorized representative of Licensee. Upon any violation of the foregoing covenants, Licensee shall be obligated, at Licensee's sole cost, to immediately cease such violation and, if any Hazardous Substance has been released or discharged, remediate, clean-up and remove from the Fuel Farm or other portions of the Airport or premises adjacent thereto all such Hazardous Substances; provided, however, that any such remediation, clean-up and removal shall be undertaken only after written notice of the release or discharge has been given by Licensee to Licensor and Licensor has approved the method of remediation, clean-up and removal. Notwithstanding the proceeding or any other provision of this Agreement, the introduction, receipt, delivery, creation, use, storage, dispensing or disposal of any Hazardous Substances at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto, and any remediation, clean-up or removal of released or discharged Hazardous Substances, by or on behalf of Licensee or any other Licensee Parties shall be conducted to the satisfaction of Licensor.

8.3 **INDEMNITY.** LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES, AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS (TOGETHER, "LICENSOR INDEMNIFIED PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, JUDGMENTS, DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), ACTIONS, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR OR OTHER SUCH

LICENSOR INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH ANY BREACH OF ANY PROVISION OF SECTION 8.2 OR ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THE RECEIPT, DELIVERY, STORAGE, MAINTENANCE, TRANSPORTATION, DISPENSING, OR OTHER USE OF ANY HAZARDOUS SUBSTANCES, **INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR AND ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

8.4 As used in this Section 8, "**Hazardous Substances**" shall include, without limitation, any and all hazardous or toxic substances, materials, contaminants, pollutants, or wastes pertaining to health or the environment as are identified, defined or listed elsewhere in any applicable local, state and federal ordinances, rules, regulations, laws and statutes, as the same may hereafter be passed, issued, enacted and/or amended, such as asbestos, petroleum products, hazardous materials, hazardous wastes and hazardous and/or toxic substances as defined or used in the Comprehensive Environmental Response, Compensation And Liability Act Of 1980, as amended (42 U.S.C. §9601 Et Seq.) and The Resource Conservation And Recovery Act, as amended (42 U.S.C. §6901 Et Seq.).

8.5 Licensee shall not, nor shall Licensee permit or allow any other Licensee Parties to, (a) cause any damage or waste at or about the Fuel Farm; (b) overload the Fuel Tanks; (c) cause any objectionable or unpleasant odors to emanate from the Fuel Tanks, except odors ordinarily emanating from a substantially similar aircraft fuel farm; (d) take any other action which would constitute a nuisance or would disturb or endanger Licensor, its employees, agents and other representatives, other licensees of the Fuel Farm, other occupants or users of the Airport or any neighbors of the Airport; or (e) permit any unlawful practice to be carried on or committed on the Fuel Farm.

8.6 Licensee shall procure, at its sole expense, any permits and licenses required for the use of the Fuel Farm including, without limitation, any permit or license required by the fire department of Licensor. At Licensor's request, Licensee shall deliver to Licensor copies of all such permits and licenses.

8.7 Only authorized and properly trained personnel of Licensee shall use the Fuel Farm pursuant to Licensee's rights under this License. In addition, if Licensee's business makes it advisable for Licensee to take any extra precautions at the Fuel Farm, Licensee shall take all such extra precautions.

SECTION 9

MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT

9.1 During the Term, Licensee, at Licensee's sole expense, shall maintain, repair and replace, as reasonably and prudently required, all equipment at the Fuel Farm diagonally cross-hatched on Exhibit "F" attached hereto (collectively, the "**Licensee Equipment**"). Without limiting the generality of the forgoing, the Licensee Equipment shall include all fuel loading and unloading equipment, such as hoses, couplings, swivels and such devices used in connection with the Fuel Tanks, and all filters, separators or other filtering medium or such devices related to the Fuel Tanks. With regard to Exhibit "F", the parties agree that no representation, warranty, or covenant is to be implied by Exhibit "F". If any such maintenance, repairs or replacements required to be made by Licensee are not made within ten (10) days after written notice delivered to Licensee by Licensor (except in the event of an emergency, in which case such repairs, replacements, changes or upgrades shall be required to be made by Licensee, as quickly as reasonably possible under the circumstances), then Licensor may perform such maintenance, repairs and replacements, and Licensee shall pay to Licensor, on demand, the costs of such maintenance, repairs and replacements, plus 15% for Licensor's overhead, plus interest on such sums). If Licensor elects to perform such maintenance, repairs or replacements, Licensor shall have no liability to Licensee for any loss or damage that may result to Licensee's business by reason of the same.

9.2 Except for the obligations of Licensee to be responsible for the continued maintenance, repairs and replacements of the Licensee Equipment described in Section 9.1 and Licensee's obligations under Section 9.3, and subject to the other obligations of Licensee under this License, Licensor shall at all times keep the Fuel Farm in good condition and repair generally in keeping with the standards of Licensor for the Airport and prevailing industry standards. Licensor, however, shall not be required to make any repairs occasioned by the act, omission, damage or negligence of Licensee, its employees, agents or other representatives, or any other person entering or using the Fuel Farm allegedly through the rights granted to Licensee under this License; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Section 15 and Section 16 of this License. In the event that the Fuel Tanks or other parts of the Fuel Farm should become in need of repair required to be made by Licensor hereunder, Licensee shall give immediate written notice thereof to Licensor and Licensor shall have a commercially reasonable time after receipt of such written notice in which to make such repairs. The costs of Licensor incurred pursuant to this Section 9.2 shall be included in the Common Area Charge.

9.3 During the Term, Licensee shall keep the Fuel Tanks, and cooperate with Licensor and other licensees of the Fuel Farm in keeping the Fuel Farm sidewalks, service-ways and loading areas, neat, clean and free from debris.

SECTION 10

ALTERATIONS

10.1 Licensee shall not make any installations, alterations or replacements of improvements, fixtures or equipment at the Fuel Farm without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Without limiting the generality of the immediately preceding sentence, any installation, alteration or replacement consented to by Licensor must be effected strictly in accordance with Licensor's instructions and shall not unreasonably interfere with or disrupt the activities of Licensor or any other licensees of fuel tanks at the Fuel Farm. Licensee shall, promptly following the completion of any installations, alterations or replacements consented to by Licensor, deliver to Licensor "as built" plans and specifications with respect to any such installations, alterations and replacements. Any permitted installation, alteration or replacement which may be made or installed by Licensee in connection with the Fuel Farm shall remain upon and become the property of Licensor on completion of such installation, alteration or replacement; provided, however, that Licensor may request their removal upon the expiration or earlier termination of this License, in which event Licensee shall remove the same and restore the Fuel Farm to its condition immediately preceding such installation, alteration or replacement, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16, at Licensee's sole cost and expense. In the event that Licensee fails to remove such installation, alteration and replacement from the Fuel Farm within ten (10) days after the date of expiration or earlier termination of this License, Licensor may, at its option, keep or dispose of the same as Licensor shall determine at its sole discretion, without any liability or obligation to Licensee whatsoever. Licensee shall be obligated to reimburse Licensor for any costs incurred by Licensor in removing and disposing of such installation, alteration and replacement, and restoring the Fuel Farm to its original condition immediately preceding such construction, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16.

10.2 **INDEMNITY.** All construction work done by Licensee on the Fuel Farm shall be performed in a good and workmanlike manner, lien-free and in compliance with all applicable laws, and in such manner as to cause a minimum of interference with other construction in progress at the Fuel Farm or the use of the Fuel Farm by Licensor or any other licensees of fuel tanks at the Fuel Farm. **LICENSEE AGREES TO DEFEND AND INDEMNIFY LICENSOR AND LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY INDEMNIFIED DAMAGES RESULTING FROM SUCH WORK, INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

10.3 In the event Licensee uses a general contractor to perform any installations, alterations or replacements on the Fuel Farm, Licensee shall, prior to the commencement of such work, require said general contractor to execute

and deliver to Licensor a waiver and release of lien (in form and content reasonably satisfactory to Licensor) of any and all claims against Licensor and liens against the Fuel Farm to which such contractor might at any time be entitled, and to execute and record a Bond to Pay Claims (the "**Bond**") in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Licensor. The delivery of the waiver and release of lien and the Bond within the time period set forth above shall be a condition precedent to Licensee's ability to enter on and begin its installation, alteration or replacement work on the Fuel Tanks and, if applicable, to any reimbursement from Licensor for Licensee's work.

10.4 In the event that Licensor elects to modify all or any portion of the Fuel Farm, Licensee will cooperate with Licensor during such modification, including Licensee's tolerating temporary inconveniences.

SECTION 11

ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT

11.1 Licensor shall have the right to enter upon the Fuel Farm at any time for any purpose consistent with this License.

11.2 Neither Licensee nor any Licensee Parties shall enter onto the roof of the Fuel Farm.

11.3 Neither Licensee nor any Licensee Parties shall use or manipulate in any manner any fuel tanks at the Fuel Farm (other than the Fuel Tanks), or any equipment used solely therewith.

11.4 Licensor shall have no liability to Licensee for any loss of access by Licensee to the Fuel Farm or the Fuel Tanks by reason of any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor.

SECTION 12

UTILITIES

12.1 Failure by Licensor to furnish, or the interruption or termination of utility services in whole or in part, resulting from any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor, shall not render Licensor liable in any respect nor be construed as a breach of this License, nor work as an abatement of the Consideration, nor relieve Licensee from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in providing such services for any cause cease to function properly, Licensor shall use reasonable diligence to repair such equipment or machinery but, except as otherwise expressly provided herein, Licensee shall have no claim for offset, abatement of the Consideration, damages or termination of this License on account of an interruption in service thereby or resulting therefrom.

SECTION 13

INSURANCE COVERAGE

13.1 Licensor shall procure and maintain throughout the Term of this License a policy or policies of insurance, causing the Fuel Farm to be insured under standard fire and extended coverage insurance and liability insurance or that which is typically available to a municipality for such purposes in the State of Texas (plus whatever endorsements or special coverages Licensor, at its sole and reasonable discretion, may consider appropriate), to the extent necessary to comply with Licensor's obligations pursuant to the provisions set forth in this License.

13.2 Licensee shall procure and maintain throughout the Term a policy or policies of insurance, at its sole cost and expense to meet or exceed the requirements specified in the then prevailing "Addison Airport Minimum

Standards and Requirements For Commercial Aeronautical Service Providers" (the "**Minimum Licensee Insurance Standards**") which may be amended or modified by Licensor from time to time.

13.3 In the event no Minimum Licensee Insurance Standards are known to be in effect, Licensee shall procure and maintain throughout the Term, at the minimum, at its sole cost and expense: (a) a policy or policies of insurance causing the Licensee Equipment and Licensee's personal property at the Fuel Farm to be insured under standard Special Form or similar property insurance; (b) business automobile liability insurance for all owned and non-owned automobiles with a combined single limit of \$5,000,000 for bodily injury and property damage; and (c) commercial general liability insurance insuring Licensee on an occurrence basis against all claims, demands or actions arising out of or in connection with Licensee's use or occupancy of the Fuel Farm, or by the condition of the Fuel Farm. Licensee's commercial general liability policy or policies must provide coverage with a combined single limit of not less than \$5,000,000 per occurrence (with no offset for occurrences on property other than the Fuel Tanks), and Licensee's insurance policy or policies must list Licensor as a loss payee (as to the Special Form or similar property insurance) as to Licensor's interest in any of Licensee's property and as an "Additional Insured" as to all other insurance including, without limitation, the commercial general liability insurance, which shall also name as Additional Insured's any management personnel or company retained by Licensor to operate or manage the Fuel Farm and/or the Airport.

13.4 All such insurance must be written by insurance companies and on forms and with deductibles satisfactory to Licensor, and Licensee's insurance shall be primary (with any policies of Licensor being excess, secondary and non-contributory). If it becomes customary or otherwise a prudent business practice within Licensee's industry to provide insurance policies with limits higher than the foregoing limits or with coverages other than the foregoing coverages, then Licensee will provide Licensor with such additional insurance as may be requested by Licensor. Licensee also agrees to provide and maintain adequate workers' compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the workers' compensation laws of the State of Texas in no less than statutorily required amounts, covering Licensee's agents and employees in the Fuel Tanks, and containing a waiver of subrogation in favor of Licensor.

13.5 **INDEMNITY. LICENSEE** HEREBY INDEMNIFIES, AGREES TO HOLD HARMLESS AND DEFEND LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES SUFFERED BY LICENSEE OR ANY OF LICENSEE'S EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES AT OR ABOUT THE FUEL FARM WHICH WOULD HAVE BEEN OR IS COVERED BY AN APPROPRIATE WORKERS' COMPENSATION INSURANCE POLICY (AS MAY BE REQUIRED BY LAW TO BE CARRIED BY LICENSEE) AND/OR EMPLOYER'S LIABILITY INSURANCE POLICY, INCLUDING ANY INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.

13.6 Licensee shall obtain a written obligation on the part of each insurance company to notify Licensor at least thirty (30) days prior to cancellation, non-renewal or modification of all such insurance described above. Such policies or duly executed certificates or other evidence of such insurance (in any event in form and content reasonably satisfactory to Licensor) shall be delivered to Licensor prior to the Commencement Date. Renewals of insurance shall be delivered to Licensor at least thirty (30) days prior to the expiration of the respective policy term(s). If Licensee should fail to comply with the foregoing requirement relating to insurance, Licensor may obtain such insurance on Licensee's behalf, and Licensee shall pay to Licensor on demand as additional Consideration the premium cost plus interest on such additional Consideration at the maximum contractual rate which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month).

SECTION 14

WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION

14.1 Licensor and its agents, employees or authorized representatives shall not (a) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any injury to person (including, without limitation, death) or damage to or destruction of property caused by the Fuel Tanks or other portion of the Fuel Farm becoming out of repair or by defect or failure of any structural element of the Fuel Tanks or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by fuel, gas, water, steam, electricity or oil leaking, escaping or flowing into the Fuel Tanks or the Fuel Farm, except where due to Licensor's willful acts or gross negligence in failing to maintain or make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Licensor of the need for such repairs and Licensor failed to remedy said condition; and (b) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other licensees of fuel tanks at the Fuel Farm or of any other persons whomsoever, except for the willful misconduct or gross negligence of authorized employees, agents or authorized representatives of Licensor.

14.2 **INDEMNITY.** Licensor shall not be liable to Licensee, any Licensee Parties or any other person for (a) any injury to person (including, without limitation, death) or damage to or destruction of property on or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto caused by the act or omission of Licensee, any Licensee Parties or any other person using the Fuel Farm or any equipment used in connection therewith under the express or implied invitation of Licensee; or (b) events, acts or occurrences arising out of any breach or default by Licensee in the performance of its obligations under this License. **LICENSEE AGREES TO AND SHALL DEFEND AND INDEMNIFY LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS AND HOLD LICENSOR AND THE OTHER LICENSOR INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF SUCH INJURY, INDEMNIFIED DAMAGES OR DESTRUCTION, OR INDEMNIFIED DAMAGES CAUSED BY (I) LICENSEE'S PERFORMANCE OF THIS AGREEMENT, (II) THE USE OF THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO BY LICENSEE OR BY ANY LICENSEE PARTIES; (III) THE CONDUCT OF LICENSEE'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY LICENSEE (OR ANY OF LICENSEE PARTIES) TO BE DONE IN OR ABOUT THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO; (IV) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY LICENSEE UNDER THIS AGREEMENT; OR (V) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE OTHER LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.**

14.3 Licensor and Licensee each hereby waives all right of recovery against the other, and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property arising from any cause that is insurable under standard Special Form or similar property insurance or which is required herein to be insured thereby (and each party agrees to obtain an endorsement to that effect in their respective Special Form or similar property insurance policies), **EVEN IF SUCH LIABILITY OR LOSS IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY**; provided, however, that this mutual waiver and release is applicable only with respect to any loss or damage occurring during the time when such Special Form or similar property insurance policies which are readily available in the marketplace contain a clause or permitted endorsement to the effect that any such waiver and release does not adversely affect or impair the policy or the right of the insured party to proceeds under such policy and further provided that this waiver and release shall be applicable only to the extent that insurance proceeds are actually paid and collected to cover for such loss or damage and shall not be applicable to the portion of any such loss or damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 14.3 is cumulative with any releases or exculpations, which may be contained in any other provisions of this License.

SECTION 15

DAMAGES BY CASUALTY

15.1 Licensee shall give immediate written notice to the Licensor of any damage caused to the Fuel Farm or any Fuel Tank by fire or other casualty.

15.2 In the event that the Fuel Farm or any Fuel Tank is damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance, and Licensor does not elect to terminate this License as hereinafter provided, Licensor shall proceed with reasonable diligence and at its sole cost and expense (to the extent that insurance proceeds are available therefore, and provided that Licensee shall reimburse Licensor for any such costs and expenses for which Licensee may be liable under this License) to rebuild and repair the Fuel Farm or any Fuel Tank. In the event (a) the Fuel Farm or any Fuel Tank is destroyed or substantially damaged by a casualty not covered by Licensor's insurance or (b) the Fuel Farm or any Fuel Tank is destroyed or rendered unusable (as determined by Licensor), then Licensor may elect either to terminate this License as to all Fuel Tanks or just the damaged, destroyed or unusable Fuel Tank(s) or to proceed to rebuild and repair the Fuel Farm or any damaged, destroyed or unusable Fuel Tank. Licensor shall give written notice to Licensee of any such election within sixty (60) days' after the occurrence of such casualty and, if Licensor elects to rebuild and repair, shall proceed to do so with commercially reasonable diligence.

15.3 Licensor's obligation to rebuild and repair under this Section 15 shall, in any event, be limited to restoring the Fuel Farm or any Fuel Tank to substantially the condition in which the same existed prior to such fire or other casualty, exclusive of any Licensee Equipment, alterations, additions, improvements, fixtures and other equipment installed by Licensee. Licensee agrees that promptly after completion of such work by Licensor, Licensee will proceed with reasonable diligence and at Licensee's sole cost and expense to restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

15.4 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 15, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 16

EMINENT DOMAIN

16.1 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, at Licensor's election, this License shall terminate and Licensor shall credit Licensee for unearned Consideration, if any, effective on the date physical possession is taken by the condemning authority.

16.2 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, and Licensor elects not to terminate this License, Licensor shall make all necessary repairs or alterations to the remaining Fuel Farm and, promptly after completion of such work by Licensor, Licensee shall restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

16.3 If all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this License shall terminate effective on the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Fuel Farm shall be the property of Licensor, and Licensee hereby assigns its interest in any award related to such taking to Licensor.

16.5 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 16, it will continue the operation of its business within the Fuel Farm to the extent practical.

SECTION 17

ASSIGNMENT AND SUBLETTING

17.1 Licensee shall not and has no authority to assign or in any manner transfer this License or any interest herein, sublicense its interest under this License or any part thereof, or grant any license, concession or other right of use of any portion of the Fuel Farm without Licensors prior written consent, which may be withheld in Licensors sole discretion. Any attempted assignment or transfer, or any attempt to grant any sublicense, concession or other right of use, in violation of the preceding sentence shall be null and void, *ab initio*. In determining whether or not to grant its consent, Licensors shall be entitled to take into consideration all factors including, without limitation, Licensors desired Licensee mix, the reputation and net worth of the proposed transferee, purported intent and use of the facilities by the proposed transferee (even beyond what is specified in Section 1.1(q)) and the then-current market conditions (including market consideration). In addition, Licensors shall also be entitled to charge an assignment fee for processing and considering, but not necessarily consenting to, Licensees request. Consent by Licensors to one or more assignments, transfers, or sublicenses shall not constitute a novation or waiver of Licensors rights as to any subsequent assignments, transfers, and sublicenses. If Licensors consents, any unexercised extension options of Licensee described on Exhibit "D" attached hereto shall be deemed null and void, *ab initio*, and of no force or effect.

17.2 If Licensee is a corporation, partnership or other entity (other than a publicly traded entity), and if at any time during the Term of this License the person or persons who own a majority of either the outstanding voting rights or controlling interests of Licensee at the time of the execution of this License cease for any reason to own a majority of such voting rights or controlling interests (except as a result of transfers by devise or descent) of Licensee, the loss of a majority of such voting rights or controlling interests shall be deemed an assignment of this License by Licensee and, therefore, subject in all respects to the provisions of Section 17.1 above. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Licensee shall give to Licensors, upon Licensors request, a list of such person or persons.

17.3 Any assignee or other transferee of an interest in and to this License shall be deemed, by acceptance of such assignment or other transfer or by use of the Fuel Farm, to have assumed all of the obligations set forth in or arising under this License. Such assumption shall be effective as of the earlier of the date of such assignment or other transfer, or the date on which the assignee or other transferee commences use of the Fuel Farm.

17.4 Notwithstanding any assignment, other transfer or subletting, Licensee shall at all times remain fully responsible and liable for the payment of the Consideration herein specified and for compliance with all of its other obligations under this License (even if future assignments, transfers and sublicenses occur subsequent to the assignment, transfer or sublicensing by Licensee, and regardless of whether or not Licensees approval has been obtained for such future assignments, transfers and sublicensing). In the event that for any reason any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, prohibited by this Section 17 is consummated without the prior written consent of Licensors, or if an assignment, sublicense or other transfer by Licensee is permitted by Licensors, and the consideration paid and/or payable by an assignee, transferee, sublicensee or other user by reason of this License exceeds the Consideration paid payable under this License, then Licensee shall be bound and obligated to pay Licensors all such excess consideration within ten (10) days following receipt thereof by Licensee from such assignee, transferee, sublicensee or other user. Finally, in the event of any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, whether permitted by Licensors or otherwise consummated without Licensors consent, it is understood and agreed that all consideration paid to Licensee by the assignee, transferee, sublicensee or other user shall be received by Licensee in trust for Licensors to be forwarded immediately to Licensors without offset or reduction of any kind, and upon election by Licensors such consideration shall be paid directly to Licensors as specified in Section 4.2 of this License (to be applied as a credit and offset to Licensees Consideration obligation).

17.5 Licensee shall not and has no authority to mortgage, pledge or otherwise encumber its interest in this License, without the prior written consent of Licensors, which consent may be withheld in Licensors sole discretion. Any such mortgage, pledge or other encumbrance in violation of the preceding sentence shall be null and void, *ab initio*.

17.6 In the event of the transfer and assignment by Licensor of its interest in this License to a person or persons expressly assuming Licensor's obligations under this License, Licensor shall thereupon be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of the Licensor for performance of such obligations. Any security given by Licensee to secure performance of Licensee's obligations hereunder may be assigned and transferred by Licensor to such successor in interest and Licensor shall thereby be discharged of any further obligation relating thereto.

SECTION 18

ESTOPPELS

18.1 Licensee agrees that it will, from time to time upon request by Licensor, execute and deliver to Licensor a written statement addressed to Licensor (or to a party designated by Licensor), which statement shall identify Licensee and this License, shall certify that this License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Licensor is not in default as to any obligations of Licensor under this License (or if Licensor is in default, specifying any default), shall confirm Licensee's agreements contained in this License, and shall contain such other information or confirmations as Licensor may reasonably request. Licensor is hereby irrevocably appointed and authorized as the agent and attorney in fact of Licensee to execute and deliver any such written statement on Licensee's behalf if Licensee fails to do so within fourteen (14) business days after the delivery of a written request from Licensor to Licensee.

SECTION 19

NON-COMPETE

19.1 Licensee covenants and agrees that during the Term of this License, neither Licensee nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Licensee (and also, in the event Licensee is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly shall operate or commence operation of any facility selling or that otherwise offers for sale any aircraft fuel of the type to be used by Licensee in the Fuel Tanks or similar or related items, or in any manner competes with the business of the Fuel Farm, within a straight-line radius of seven (7) miles of the Fuel Farm, which Licensee acknowledges is a reasonable area for the purpose of this provision. It is acknowledged that Licensor will incur damages by reason of the diversion of business from the Fuel Tanks and Fuel Farm to such other facility within such radius, as a proximate result of the establishment of such other facility.

SECTION 20

DEFAULT AND REMEDIES

20.1 Default by Licensee. The following events shall be deemed to be events of default by Licensee under this License:

- (a) Licensee shall fail to pay when due any Base Fee or other sum of Consideration including, but not limited to, Licensee's Additional Fee or adjusted Additional Fee and Fuel Flowage Fees as required to be paid by Licensee to Licensor under this License (hereinafter sometimes referred to as a "**Monetary Default**").
- (b) Licensee shall fail to comply with any term, provision or covenant of this License (other than a Monetary Default) and shall not cure such failure within thirty (30) days after delivery to Licensee notice of the occurrence of such default.
- (c) Licensee shall become insolvent, or shall make a transfer in fraud of creditors, or shall seek relief under Title 11 of the Bankruptcy Code (defined in Section 20.3 below) or shall make an

assignment for the benefit of creditors, or Licensee shall admit in writing its inability to pay its debts as they become due.

- (d) Licensee shall file a petition under any section or chapter of the Bankruptcy Code, as amended, pertaining to bankruptcy or under any similar insolvency or debtor-relief law or statute of the United States or any state thereof, or Licensee shall be adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder; or an involuntary case is commenced under 11 U.S.C. § 303 as amended or an insolvency, receivership or any similar proceedings are commenced under Federal or State law and such proceedings are not fully and finally dismissed, or a petition or answer proposing the adjudication of Licensee as bankrupt or its reorganization under any present or future federal or state bankruptcy or similar insolvency or debtor-relief law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.
- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Licensee, or for the Fuel Tanks or any of Licensee's property located therein, in any proceeding brought by Licensee; or any such receiver or trustee shall be appointed in any proceeding brought against Licensee and shall not be discharged within sixty (60) days after such appointment or Licensee shall consent to or acquiesce in such appointment.
- (f) The license hereunder shall be revoked upon execution or other process of law in any action against Licensee.
- (g) The liquidation, termination, dissolution, forfeiture of right to do business or death of Licensee.

20.2 Remedies of Licensors. Upon the occurrence of any event of default by Licensee under this License, Licensors may:

- (a) immediately terminate this License and at the expense and liability of the Licensee, alter or change any or all locks or other security or power devices controlling access to the Fuel Farm or Fuel Tanks without posting or giving notice of any kind to Licensee.
- (b) do whatever Licensee is obligated to do under the terms of this License; and Licensee agrees to reimburse Licensors on demand for any expense which Licensors may incur in thus effecting compliance with Licensee's obligations under this License together with interest at the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) per annum.

20.3 Event of Bankruptcy. In addition to, and in no way limiting the other remedies set forth in this Section 20, Licensors and Licensee agree that if Licensee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then:

(a) "adequate protection" and "adequate assurance" of Licensors' interest under this License pursuant to the provisions of Sections 361, 362, 363, 364 and 365 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the "**Bankruptcy Code**"), prior to assumption and/or assignment of this License by Licensee shall include, but not be limited to, all or any part of the following:

- (1) curing all monetary and non-monetary defaults, including, without limitation, payment of attorneys' fees incurred by Licensors related to enforcing the terms and conditions of this License and the continued payment by Licensee of the Base Fee and all other Considerations due and owing hereunder and the performance of all other covenants and obligations hereunder by Licensee;
- (2) the furnishing of an additional and/or new security deposit by Licensee in the amount of three (3) times the then-current monthly Base Fee and other Considerations payable hereunder; and
- (3) in addition, the Licensee shall provide financial statements evidencing the financial condition and operating performance of any proposed assignee and guarantors, if any, which is sufficient to show that the proposed assignee is capable of performing in Licensors' sole discretion, all of the Licensee's obligations under the terms and conditions of this License,

including, without limitation, the "adequate assurance" and "adequate protection" requirements set forth herein.

(b) in the event Licensor consents, in its sole discretion, to the assignment of this License, any person or entity, to which this License is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Licensee arising under this License on and after the effective date of such assignment, including, without limitation, adequate protection and adequate assurance requirements under Section 20.3(a). Any such assignee shall, upon demand by Licensor, execute and deliver to Licensor an instrument confirming such assumption of liability, along with applicable guaranties of any principals of the assignee.

(c) notwithstanding the prohibition against assignment contained in Section 17.1 herein, if this License is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Licensor including Base Fees and other Considerations hereunder, shall be and remain the exclusive property of Licensor and shall not constitute property of Licensee or of the bankruptcy estate of Licensee. Any and all monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust by Licensee or Licensee's bankruptcy estate for the benefit of Licensor and shall be promptly paid to or turned over to Licensor.

(d) to the extent permitted by law, Licensor and Licensee agree that this License is a contract under which applicable law excuses Licensor from accepting performance from, or rendering performance to, any person or entity other than Licensee within the meaning of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq.

20.4 No Waiver. The following do not constitute a waiver of any rights Licensor may have under the License:

(a) failure of Licensor to declare any default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of such default, nor shall it constitute an estoppel against Licensor, but Licensor shall have the right to declare the default at any time and take such action as is lawful or authorized under this License; (b) failure by Licensor to enforce its rights with respect to any one default shall not constitute a waiver of its rights with respect to any subsequent default; (c) receipt by Licensor of Licensee's keys to the Fuel Tanks or the Fuel Farm shall not constitute a termination of this License; and (d) no payment by Licensee or receipt by Licensor of (i) a lesser amount than the Consideration due under this License shall be deemed to be other than on account of the earliest Consideration due hereunder; and (ii) any endorsement or statement on any check or any letter accompanying any check or payment as Consideration shall not be deemed an accord and satisfaction and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such Consideration or pursue any other remedy in this License provided.

20.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Licensor is intended to be exclusive of any other right or remedy it may have, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law, common law, in equity, or otherwise. In addition to other remedies provided in this License, Licensor shall be entitled, to the extent permitted by applicable law, but without the requirement of a bond or evidence of irreparable harm, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this License, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this License, or to any other remedy allowed to Licensor by law, common law, in equity, or otherwise.

20.6 Evidence of Termination. To the extent any provision of applicable law requires some action by Licensor to evidence or effect the termination of this License or to evidence the termination of Licensee's right of occupancy, Licensee and Licensor hereby agree that written notice by Licensor to Licensee or to any of Licensee's agents, servants or employees, which states, in substance, that Licensor has elected to and has terminated this License, shall be sufficient to evidence and effect the termination herein provided for.

20.7 Licensor Default. Licensee shall not exercise any remedy for any breach or default by Licensor under this License without first giving written notice of such breach or default to Licensor and a commercially reasonable opportunity to cure such breach or default of not less than thirty (30) days from the date Licensor receives such notice.

SECTION 21

HOLDING OVER

21.1 In the event Licensee continues use of the Fuel Farm after the termination or expiration of this License and without the execution of a new license, it will be deemed to be using the Fuel Farm as a licensee under a license terminable at will at a daily fee equal to the Consideration herein provided plus one hundred percent (100%) of such amount, pro-rated on a daily basis, otherwise subject to all the conditions, provisions and obligations of this License insofar as the same are applicable to a license terminable at will.

SECTION 22

EXPIRATION OR TERMINATION OF LICENSE

22.1 Immediately prior to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, Licensee shall:

- a) deliver the Fuel Tanks back to Licensor in good repair, excepting reasonable wear and tear and losses required to be restored by Licensor provided for in Section 9.1, Section 15 and Section 16;
- b) completely remove all sludge, solids, and residual substances from inside of the Fuel Tanks, piping and filtration devices in accordance with state and federal guidelines;
- c) dispose of tank bottom sludge according to state and federal laws and regulations;
- d) remove and replace all filters, separators or other filtering medium or such devices typically required under Section 9.1;
- e) secure the Fuel Tanks by bolting and locking all manways, valves and cap or plug fill lines, gauge openings or pump lines; and
- f) take all other actions reasonably necessary to empty, secure and stabilize the Fuel Tanks as instructed by Licensor.

22.2 On the surrender of the Fuel Tanks at the expiration or earlier termination of this License, Licensee shall give Licensor at least seventy-two (72) hours advance notice that the Fuel Tanks are ready for Licensor's inspection and acceptance. Upon this notification, Licensor shall then inspect the Fuel Tanks and call for the inspection by the Town of Addison Fire Department and any other regulatory entity having jurisdiction over such matters. Licensee agrees to remedy, at first reasonable opportunity, any exception or exceptions reported as a result of said inspections. Once all exceptions have been resolved and accepted by Licensor, Licensor shall deliver written notice to Licensee that Licensor has accepted the surrender of the Fuel Tanks pursuant to this Section 22, and Licensee's right to access and use of the Fuel Tanks and Fuel Farm is terminated.

SECTION 23

NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other address as they might specify by written notice.

23.2 If and when included within the term "Licensor" as used in this License there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Licensor; if and when included within the term "Licensee" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Licensee. All parties included within the terms "Licensor" and "Licensee", respectively, shall be bound by notices and payments given in accordance with the provisions of this Section. 23.2 to the same effect as if each had received such notice or payment. In addition, Licensee agrees that Licensor's attorney, property manager or other agent may give notices to Licensee on Licensor's behalf.

SECTION 24

COMMISSIONS

24.1 **EACH PARTY HERETO REPRESENTS TO THE OTHER THAT IT HAS NOT AUTHORIZED ANY BROKER OR FINDER TO ACT ON ITS BEHALF IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS LICENSE, AND LICENSOR AND LICENSEE EACH AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING MADE OR ALLEGED TO HAVE BEEN MADE BY SUCH INDEMNIFYING PARTY WITH ANY SUCH OTHER BROKER OR FINDER IN CONNECTION WITH THIS LICENSE, INCLUDING ANY SUCH CLAIM, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY, PROVIDED THAT INDEMNIFYING PARTY SHALL HAVE NO DUTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY.**

SECTION 25

CHANGES DUE TO LEGAL REQUIREMENTS

25.1 If for any reason the Fuel Farm was not constructed in compliance with any legal requirements in existence at the time of construction, Licensor shall have no liability to Licensee or any Licensee Parties as a result thereof, except that Licensor shall have a reasonable period of time after notification from Licensee of such noncompliance to cause the Fuel Farm to comply with such legal requirements. If there are any changes to such legal requirements after the date of completion of Licensor's construction of the Fuel Farm that require changes thereto, Licensor shall have a reasonable period of time after notification from Licensee to make such changes. All costs incurred by Licensor in causing the Fuel Farm to comply with applicable laws may be included in the Common Area Charge.

SECTION 26

APPLICABLE LAWS

26.1 Licensor and Licensee acknowledge that there are in effect federal, state, county and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or the Fuel Tanks. Licensee shall not cause, or permit or allow the Licensee Parties to cause, any violation of any applicable laws. Moreover, Licensee shall have no claim against Licensor by reason of any changes Licensor may make in the Fuel Farm or the Fuel Tanks required by any applicable laws or any charges imposed upon Licensee, Licensee's customers or other invitees as a result of applicable laws.

26.2 If any provision in this License is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this license shall not be affected thereby.

26.3 Licensee hereby acknowledges that Licensor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

26.4 Licensor and Licensee hereby specifically acknowledge that U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention*, governs the conduct of the parties under the License. Licensor and Licensee hereby further specifically acknowledge that the National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing*, governs the conduct of the parties under the License. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such regulations or standards.

26.5 If, by reason of any applicable laws, the payment to, or collection by, Licensor of any Consideration or other charges payable by Licensee to Licensor pursuant to the provisions of this License is in excess of the amount (the "**Maximum Charge**") permitted by laws, then Licensee, during the period when such laws shall be in force and effect (the "**Freeze Period**"), shall not be required to pay, nor shall Licensor be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring such laws to be invalid or not applicable to the provisions of this License, Licensee, to the extent not then proscribed by applicable law, and commencing with the first day of the month immediately following, shall pay to Licensor as additional Consideration, prorated in equal monthly installments over the balance of the Term of this License, a sum equal to the cumulative difference between the Maximum Charge and such Consideration or other charge during the Freeze Period. If any provision of this Section 26.5, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to effect the validity and enforceability of any of the other provisions of this Section 26.5 or of this License, all of which shall remain in effect to the fullest extent permitted by law.

SECTION 27

MANDATORY NON-BINDING MEDIATION

27.1 The parties have entered into this License in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute (unless the Dispute involves an event of default of a payment obligation under this License) amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this License (the "**Dispute**"), they will first utilize the following procedures specified in this Section 27 (the "**Procedure**") before resorting to any court proceedings, unless the lack of immediate court proceedings would cause irreparable harm without an adequate remedy at law:

(a) The party seeking to initiate the Procedure (the **"Initiating Party"**) will give Notification to the other party. The Notification must describe in general terms the nature of the Dispute and the Initiating Party's requested relief. Additionally, the Notification must identify one or more individuals with authority to settle the Dispute on the Initiating Party's behalf. The party receiving the Notification (the **"Responding Party"**) will have five (5) business days within which to designate by reply Notification to the Initiating Party one or more individuals with authority to settle the Dispute on the Responding Party's behalf. The individuals so designated will be known as the **"Authorized Individuals"**. The Initiating Party and the Responding Party will collectively be referred to as the **"Disputing Parties"** or individually as a **"Disputing Party"**.

(b) The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event not later than fourteen (14) days from the date of the Initiating Party's Notification, meet to discuss the resolution of the Dispute. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within fourteen (14) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure:

(i) The Authorized Individuals will have five (5) business days from the date they cease direct negotiations to submit to each other by Notification a written list of acceptable qualified attorney-mediators not affiliated with any party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree jointly to request a state district or federal district judge of their choosing, from the State of Texas, to supply a list of potential qualified attorney-mediators. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, either of the Disputing Parties may unilaterally request a local state district judge for Dallas County, Texas, to supply the list. Within five (5) business days from the date the list is received, the Authorized Individuals will again rank the proposed mediators in numerical order of preference and will simultaneously exchange the list and will select as the mediator the individual receiving the highest combined ranking. If the mediator is not available to serve, they will proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

(ii) In consultation with the mediator selected, each Disputing Party will cause its Authorized Individual to cooperate with the other Authorized Individual in promptly designating a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation shall not be later than thirty (30) days after selecting the mediator.

(iii) If any Disputing Party has substantial need for information in another Disputing Party's possession or control in order to prepare for the mediation, all Disputing Parties will attempt to agree to procedures to expeditiously request and exchange the information and the scope of such request with the mediator's help if required.

(iv) At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator, and by Notification deliver to the other Disputing Party, a general and concise written summary of its views on the Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to the mediator.

(v) In the mediation, each Disputing Party will be represented by its Authorized Individual and may also be represented by counsel. In addition, each Disputing Party may, with the mediator's permission and subject to the confidentiality provisions of this Section 27, bring additional persons as needed to respond to questions, contribute information and participate in the negotiations.

(vi) The mediator will determine the format for the meetings. The format must be designed to insure that (A) both the mediator and the Authorized Individuals have an opportunity to hear an

oral presentation of each Disputing Party's views on the Dispute, and (B) the Authorized Individuals attempt to negotiate to resolve the Dispute, with or without the assistance of counsel or others permitted to attend, but with the mediator's assistance. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private and the Disputing Parties agree to not disclose or release any information to third-parties (except as allowed under Subsection (x) below). The Parties will require the mediator to keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties commit to participate in the proceedings with the intention of resolving the Dispute if at all possible.

(vii) The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by (a) executing a settlement agreement between the Disputing Parties, (b) declaring to the mediator that the mediation is terminated, or (c) a Disputing Party declaring in writing that the mediation process is terminated when one (1) full day's mediation session is concluded.

(viii) Even if the mediation is terminated without the resolution of the Dispute, the Disputing Parties agree not to terminate negotiations and not to commence any court proceedings before five (5) days following the termination of the mediation. In any event, any Disputing Party may terminate the mediation procedure if the other Disputing Party fails to comply with this Procedure or if any claim in the Dispute, in the absence of such termination, could be barred by any applicable statute of limitations.

(ix) The mediator's fees and expenses will be shared equally among the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters.

(x) Mediation is a compromise and offer to compromise subject to Rule 408 of the Texas and Federal Rules of Evidence. The entire mediation process is confidential, and no stenographic, visual or audio record will be made. Subject to Rule 408 of the Texas and Federal Rules of Evidence, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Party, their Authorized Individuals or any of their agents, employees, representatives or other invitees and by the mediator are confidential and, in addition and where appropriate, will be deemed privileged, and shall not be disclosed to anyone who is not (A) a party's agent, employee, expert, witness, or representative and (B) bound by the same confidentiality standards as the parties hereto. Evidence otherwise discoverable or admissible, however, is not excluded from discovery or admission as a result of its use in the mediation.

SECTION 28

MISCELLANEOUS

28.1. **INDEMNITY.** LICENSEE SHALL ALSO DEFEND AND INDEMNIFY LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS AGAINST AND HOLD LICENSOR AND THE LICENSOR INDEMNIFIED PERSONS HARMLESS FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LICENSOR OR THE LICENSOR INDEMNIFIED PERSONS MAY INCUR IF LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS BECOME OR ARE MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY LICENSEE AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY AGAINST LICENSEE, OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE FUEL FARM BY LICENSE OR BY AGREEMENT WITH LICENSEE; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR LICENSEE OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR TRANSACTION OF LICENSEE, ANY OF LICENSEE PARTIES, OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LICENSOR'S INTEREST UNDER THIS LICENSE IN A BANKRUPTCY

PROCEEDING, OR OTHER PROCEEDING UNDER THE BANKRUPTCY CODE, 11 U.S.C. PARAGRAPH 101, ET SEQ., INCLUDING SUCH COSTS, EXPENSES, DEMANDS, AND LIABILITIES AS ARE OR MAY BE CAUSED BY THE NEGLIGENCE OF THE LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH NEGLIGENCE.

28.2 Nothing in this License shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture or joint enterprise between the parties hereto, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

28.3 Licensee shall not, for any reason, withhold or reduce Licensee's required payments of Consideration and other charges provided in this License, it being agreed that the obligations of Licensor under this License are independent of Licensee's obligations except as may be otherwise expressly provided herein.

28.4 Licensee shall deposit the Security Deposit with Licensor upon Licensee's execution of this Lease. Licensor shall hold the Security Deposit without interest as security for the performance by Licensee of Licensee's covenants and obligations under this License. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. The Security Deposit is not an advance payment of rental or a measure of liquidated damages in case of an event of default by Licensee. Upon the occurrence of an event of default by Licensee, Licensor, from time to time, in addition to and without prejudice to any other remedy provided herein or provided by law, may use the Security Deposit to the extent necessary to make good any arrearages of Consideration and any other damage, injury, expense or liability caused to Licensor by any events of default by Licensee. If at any time during this License the Security Deposit then being held by Licensor is less than one monthly installment of the Base Fee plus the then prevailing Additional Fee, Licensee will be required to make an additional payment to Licensor so that the Security Deposit being held by Licensor is always equal to one monthly installment of the Base Fee plus the then prevailing Additional Fee. If an event of default by Licensee does not exist, and no condition exists, which, with the passage of time or the giving of notice, or both, would constitute an event of default, when this License expires or terminates, any remaining balance of such Security Deposit not used by Licensor in accordance with this License and applicable law shall be returned by Licensor to Licensee at the last address of Licensee according to the records of Licensor within a commercially reasonable time following such expiration or termination. Licensee's actual or attempted assignment, transfer, or encumbrance of the Security Deposit will not bind Licensor.

28.5 One or more waivers of any covenant, term or condition of this License by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28.6 If any provision of this License is held to be illegal, invalid, or unenforceable, under present or future governmental laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. Licensee shall not record this License or any memorandum or short form hereof, nor shall Licensee permit or cause this License or any memorandum or short form hereof to be recorded. Any attempt at recordation of this License or of a memorandum or short form hereof by Licensee without having first obtained Licensor's written approval shall, at Licensor's option, constitute an automatic event of default by Licensee and, at Licensor's option, may void this License and Licensee's rights hereunder.

28.7 THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS) SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LICENSE. THIS LICENSE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE FOR ANY ACTION UNDER THIS LICENSE SHALL BE IN DALLAS STATE DISTRICT COURT, DALLAS COUNTY, TEXAS, THE COUNTY IN WHICH CONSIDERATION SHALL BE PAID PURSUANT TO SECTION 1 AND SECTION 4.2 OF THIS LICENSE. BY EXECUTING THIS LICENSE, EACH PARTY HERETO (i) EXPRESSLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE

COURTS OF SUCH COUNTY AND THE STATE OF TEXAS; (II) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT THE COURTS OF SUCH COUNTY AND STATE ARE NOT A PROPER OR CONVENIENT VENUE OR FORUM; AND (III) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

28.8 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

28.9 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

28.10 The terms, provisions and covenants contained in this License shall apply to, inure to the benefit of and be binding upon the parties and their respective heirs, successors in interest, legal representatives and permitted assigns except as otherwise herein expressly provided. Neither party shall be bound by this License in any way until both parties have executed this License and each party has received a copy of this License duly executed by the other. No provision of this License is intended to inure to the benefit of any third party.

28.11 This License and the schedules, riders and exhibits attached, if any (all of which are hereby incorporated by reference herein and made a part hereof), together with the rules and regulations adopted and promulgated by Licensor pursuant to the provisions of this License, contain the entire agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this License, and this License supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease or license, lease or license proposals, brochures, representations and information conveyed, whether oral or in writing, between the parties or their respective representatives or any other person purporting to represent Licensor or Licensee. Licensee acknowledges that it has not been induced to enter into this License by any representations or warranties not set forth in this License, that Licensee has not relied upon any representations or warranties not contained in this License and that any rules of interpretation which would otherwise guide the interpretation of this License by virtue of the identity of the party drafting the terms and provisions of this License shall not apply (it being acknowledged and agreed that each party has been represented or had the opportunity to be represented by able counsel in connection with the negotiation and interpretation of this License and all terms and provisions hereof). No brochure, rendering, information, correspondence, representation, warranty or discussion shall be deemed to be a part of this License unless specifically set forth herein or specifically incorporated herein by reference. In addition, no agreement, discussion, course of dealing or course of performance between the parties shall be effective to change, modify or terminate this License or to release Licensee or any other obligated party with respect to liability for this License, either in whole or in part unless the same shall be in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

28.12 Licensee agrees to treat the financial terms of this License as confidential and shall not allow disclosure of such financial terms without the prior written consent of Licensor unless required to undertake such disclosure by applicable law. The parties acknowledge that the financial terms of this License are confidential to the maximum extent allowed under applicable law, and any disclosure of it by Licensee would cause Licensor irreparable harm, which could not be measured in actual damages.

28.13 This License consists of twenty-eight (28) Sections and Exhibits "A" through "F". In the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this License, the provision set forth in the License shall be deemed to control.

28.14 If Licensee executes this License as a corporation or partnership, each of the persons executing this License on behalf of Licensee does hereby personally represent and warrant that Licensee is a duly authorized and existing corporation or partnership, that Licensee is qualified to do business in the state in which the Fuel Farm is located, that such corporation or partnership has full right and authority to enter into this License, and that each person signing this License on behalf of such corporation or partnership is authorized to do so. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. In the event any representation or warranty set forth in this Section 28.14 is materially false, all persons who execute this License on behalf of, or as the act and deed of Licensee, shall be individually liable as Licensee.

28.15 In addition to provisions of this Agreement expressly providing for the survival of provisions of this Agreement following the expiration or earlier termination of this Agreement, any other provision of this Agreement, including, without limitation, remedies for a breach or default under this Agreement or the payment of Compensation, that could be reasonably construed to be intended by the parties to survive such expiration or termination shall so survive. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

28.16 Licensor and Licensee hereby acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this License for determining Consideration and other charges payable by Licensee are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, LICENSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LICENSEE MAY BE ENTITLED UNDER SECTION 93.004 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77TH LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED, TO THE EXTENT SUCH SECTION IS APPLICABLE.

NOTICE OF INDEMNIFICATION

THE PARTIES TO THIS LICENSE AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS LICENSE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS FOR THE LICENSEE TO INDEMNIFY THE LICENSOR AND OTHER LICENSOR INDEMNIFIED PERSONS. IF A CLAIM IS MADE AGAINST LICENSOR OR ANY OTHER LICENSOR INDEMNIFIED PERSON THAT IS INDEMNIFIED BY LICENSEE UNDER THIS AGREEMENT, LICENSEE SHALL DEFEND LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON AT LICENSEE'S SOLE COST AND EXPENSE WITH COUNSEL REASONABLY ACCEPTABLE TO LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON, OR, AT LICENSEE'S ELECTION, LICENSEE SHALL REIMBURSE LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON FOR ANY FEES OR COSTS LICENSOR OR SUCH LICENSEE INDEMNIFIED PERSON INCURS IN DEFENDING ANY SUCH CLAIM. LICENSEE'S DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

EXECUTED effective as of _____, 2006.

LICENSOR:

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____,
Carmen Moran, City Secretary

LICENSEE:

By: _____

Print Name: _____

Title: _____

Date of Signature: _____

Taxpayer Identification No. _____

ATTEST:

By: _____

Print Name: _____

Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM

DESCRIPTION:

BEING 106,831 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6983 acres Addison Airport lease Tract; THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 00° 52' 49" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;

THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 390.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 69° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

EXHIBIT "B"

SURVEY OF ADDISON AIRPORT FUEL FARM

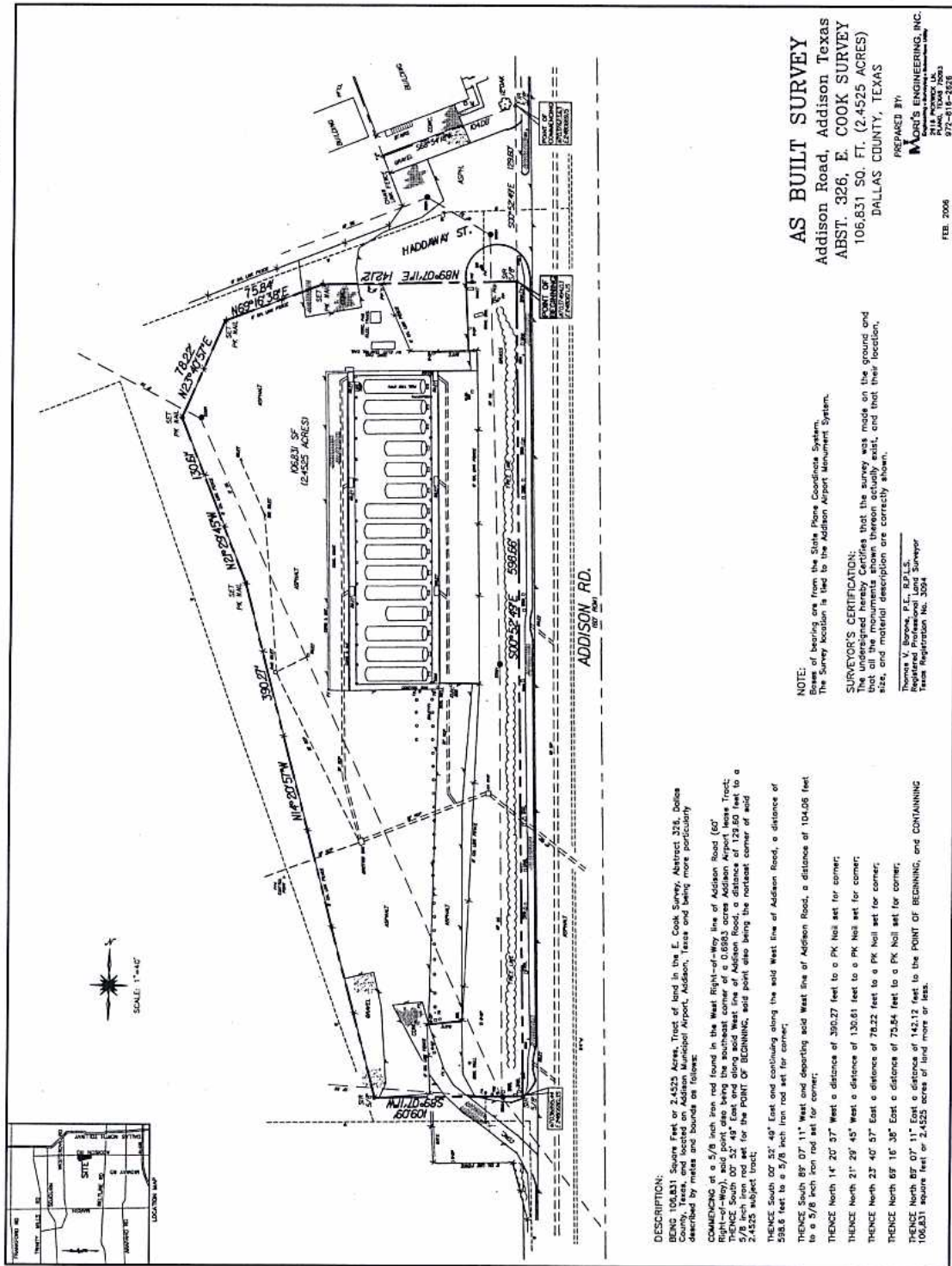
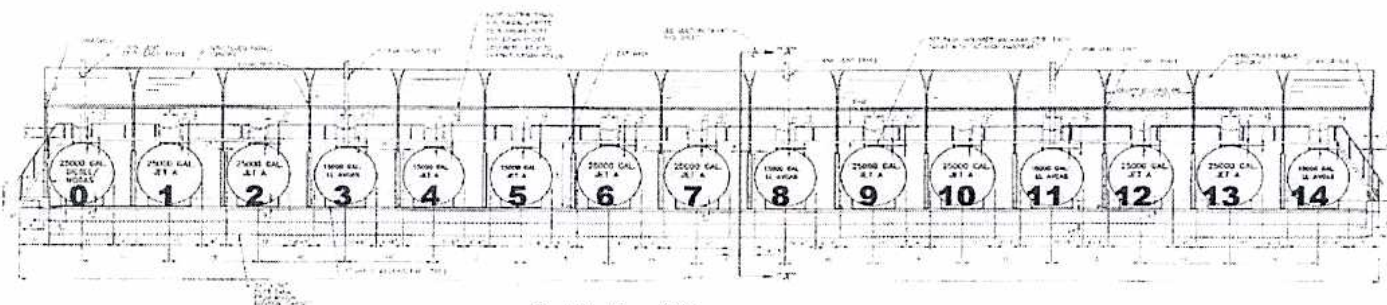


EXHIBIT "C"**SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM**

This Exhibit "C" is presented for the purpose of identifying the Fuel Tanks within the Fuel Farm, their capacity in gallons and percentage relative to the aggregate. This Exhibit "C" is subject to change at Licensor's discretion except as otherwise expressly restricted in the Agreement.

License Holder	Tank ID#	Designated Fuel Type	Tank Gallon Capacity	Capacity as % of Total Gallons	TCEQ #
Mercury Air Center – Addison, Inc.	00 _a	Motor Vehicle Gasoline	10,000	0.03175	
Mercury Air Center – Addison, Inc.	00 _b	Diesel	15,000	0.04762	
Mercury Air Center – Addison, Inc.	01	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	02	Jet A	25,000	0.07937	
Cherry Air, Inc.	03	100 LL	15,000	0.04762	
Cherry Air, Inc.	04	Jet A	15,000	0.04762	
Cherry Air, Inc.	05	Jet A	15,000	0.04762	
R. Stern FBO, Ltd.	06	Jet A	25,000	0.07937	
R. Stern FBO, Ltd.	07	Jet A	25,000	0.07937	
R. Stern FBO, Ltd.	08	100 LL	15,000	0.04762	
	09	Jet A	25,000	0.07937	
	10	Jet A	25,000	0.07937	
	11	100 LL	15,000	0.04762	
RR Investments, Inc.	12	Jet A	25,000	0.07937	
RR Investments, Inc.	13	Jet A	25,000	0.07937	
RR Investments, Inc.	14	100 LL	15,000	0.04762	
Totals			315,000	1.0000	

TCEQ=Texas Commission on Environmental Quality or its equivalence



East Sectional View

EXHIBIT "D"

TERM EXTENSIONS

Licensee (but not any assignee, sublicensee or other transferee of Licensee, even if Licensor's consent thereto is obtained in accordance with the terms and conditions of Section 17 of this License) is granted the option(s) to extend the Term of this License for four (4) consecutive term(s) of sixty (60) months each (each, a "**Term Extension**"), provided (a) Licensee is not in default under the License or any other agreement with the Town of Addison at Addison Airport at the time of its exercise of the Term Extension, nor at the commencement date of the applicable Term Extension, and (b) Licensee gives written notice to Licensor of its exercise of the option to extend the Term between that period of time being sixty (60) months prior to the end of Term and six (6) months prior to the end of Term or Term Extension (the "**Option Period**"). Each Term Extension shall commence on the day immediately following the date of expiration of the immediately preceding original Term or Term Extension and shall be upon the same terms, conditions and Consideration as were in effect hereunder during such immediately preceding original Term or Term Extension, except (i) Licensee shall have no further right of renewal after the last Term Extension described above; and (ii) the monthly Base Fee during such each Term Extension will be as follows:

(a) the first Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.2786 per gallon/yr.; and

(b) the second Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.2928 per gallon/yr.; and

(c) the third Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.3078 per gallon/yr.; and

(d) the fourth Term Extension, from _____ to _____, shall be at the monthly Base Fee rate of \$.3235 per gallon/yr.

Licensee's rights under this Exhibit "D" shall terminate if the License or Licensee's right to use of the Fuel Tanks is terminated, or if Licensee fails to timely exercise Licensee's option to extend the Term of this License in accordance with the terms and conditions of this Exhibit "D" with TIME BEING OF THE ESSENCE WITH RESPECT TO LICENSEE'S EXERCISE THEREOF.

EXHIBIT "E"**STATEMENT OF LICENSOR'S INITIAL CONSTRUCTION RESPONSIBILITY**Description of Bulk Fuel and Dispensing System For Addison Airport

The proposed Bulk Fuel Storage and Dispensing System is to be centrally located with fifteen (15) individual bulk fuel storage tanks, with off-load and five (5) Fixed Base Operator (FBO) metered dispensing systems, in a consolidated, environmentally protected site, including tanks and operating equipment, with suitable architectural considerations to blend into the site. The horizontal mounted cylindrical tanks will have an approximate dimension of ten and one-half feet (10.5' W) diameter by forty-three feet (43' L) in length (25,000 gal), or alternatively, ten and one half feet (10.5') diameter by twenty-six feet (26') in length (15,000 gal). Fuel storage tanks will be double wall, 2-hour fire rated, protected tanks. Primary products to be dispensed are Low Lead AVGAS and Jet A Fuel, with one two-compartment tank of 10,000 and 15,000 gallon, with dispensing equipment for LL MoGas and Diesel. The Jet A off-load systems will be capable of off-loading 8,000 gallons to an over-the-road fuel tanker truck within 20 minutes at approximately 350 gallons/minute and the dispensing systems into the Airport refueling vehicles will be rated at approximately 300 gallons/minute. Industry standard filtration systems with automatic shutdown and alarms will be installed on the off-load side of the storage tanks, to protect product in the fuel storage tanks. Overflow protection devices will be installed on all fuel storage tanks and connected to the pump control panel. Pump/dispensing control panel or panels, will be logically sequenced, gauged to fuel storage tanks for fuel level indication, and clearly marked for ease of operations. An oil/water separator will be installed and connected to the secondary containment dike area, using a valve connection and the off-load/dispensing pad to allow for immediate wash-down of any spilled product. The off-load/dispensing pad will be large enough to provide a designated parking spot for any aircraft-refueling vehicle that develops a leak. Fuel storage area will have explosion proof electrical fixtures and control panel. A fresh water line will be required for emergency eye wash unit and a 1" hose and reel unit installed for wash down. The hose must reach all areas of the facility, including the oil/water separator. An emergency telephone/intercom/transmitter device will be installed with direct link to the Main Fire Station alarm room located at 4798 Airport Parkway, Addison, Texas 75001-3364. Fuel storage tanks will be mounted in an 18" high concrete low wall secondary containment area, connected to the oil/water separator so that any major spill in the containment area can be washed down and pumped out through the oil/water separator. Design will include area lighting, site storm drainage and connection, any required utilities relocation, and site appearance considerations. Access from the outside (airport land side) will be controlled with electrically operated gates and/or a code or key access pad. Paved access will be required from the street and from the airfield areas. Street connection will include driveways, curb and gutter.

Source: Addison Airport Project Specification Book for Bulk Fuel Storage and Dispensing System, Section 01000A, Paragraph 9, Page 5

Council Agenda Item: #R10

SUMMARY:

Council approval is requested of a resolution authorizing the Town's participation in the Atmos Gas Standing Steering Committee.

FINANCIAL IMPACT:

The Town's contribution would be based on 5¢ per capita of the Town's resident population. The contribution would total \$733.90

BACKGROUND:

The Town of Addison has been a member of the TXU Electric Standing Steering Committee for many years. However, the nature of the natural gas market was such that the review of gas rates and tariffs occurred infrequently and required only an informal coalition of cities to conduct the review. Due to regulatory changes, this market has become more volatile and requires a formal committee structure to rapidly respond to filings Atmos, the incumbent gas provider, submits to the cities and the Railroad Commission.

In November, the Town joined other Atmos Gas customer cities in passing a resolution requiring the company show cause to justify its rates to residential and commercial customers. The company responded and consultants hired by the coalition of cities reviewed the company's materials. Attached are the consultant's initial findings. In summary, the consultants found that:

- The rate of return earned by Atmos is excessive.
- Rate base, depreciation, and operating expenses include items that are not justified and should be reduced with a subsequent reduction in gas rates.
- Atmos does not include revenue from other sources that would offset income from sales of natural gas to its customers.
- Gas Reliability Infrastructure Program (GRIP) requests filed by the company, and granted by the Railroad Commission, were not necessary since the company had already been earning in excess of its approved rate-of-return.

Once the standing committee is formed, a strategy for contesting Atmos' rates will be developed, and recommendations will be made to member cities regarding actions that need to be taken.

RECOMMENDATION:

It is recommended the Council approve the resolution and authorize the city manager to enter into agreement with the Atmos Gas Standing Steering Committee.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A GAS STANDING STEERING COMMITTEE PARTICIPATION AGREEMENT REGARDING THE CITY'S PARTICIPATION WITH OTHER CITIES IN CONNECTION WITH MATTERS RELATED TO ATMOS ENERGY; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; PROVIDING FOR THE DIRECTOR OF FINANCE TO RECEIVE INFORMATION IN CONNECTION WITH THE AGREEMENT AND TO CARRY OUT THE TOWN'S RESPONSIBILITIES THEREUNDER; PROVIDING FOR THE PAYMENT OF A FEE FOR THE CITY'S PARTICIPATION IN THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The City Council of the Town of Addison, Texas (the "City") desires to participate with other cities served by Atmos Energy in current and upcoming gas utility regulatory and rate making cases before the Texas Railroad Commission or court. In connection therewith, the Town Council does hereby approve an agreement entitled "Atmos Gas Standing Steering Committee Participation Agreement," a substantial copy of which is attached hereto (the "Agreement").

Section 2. The City Manager or the Manager's designee is hereby authorized to execute the Agreement on behalf of the City.

Section 3. The City Council does hereby name the City's Director of Financial & Strategic Services, or the Director's designee, as the representative of the City to receive notices and carry out the responsibilities for the City as set forth in the Agreement. The address for such notices is 5300 Belt Line Road Dallas, Texas 75254.

Section 4. In accordance with the Agreement, the Town Council does hereby authorize the payment of the initial participation of 5¢ per capita, according to the City's population shown in the most recent TML Directory of Texas City Officials.

Section 5. Upon adoption, a certified copy of this Resolution and the approved participation fee shall be sent to:

Jay Doegey
City of Arlington
Post Office Box 231
Arlington, Texas 76004-0231

Section 6. This Resolution shall take effect from and after its adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this
____ day of _____, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

THE STATE OF TEXAS §

COUNTY OF _____ §

ATMOS GAS STANDING STEERING COMMITTEE
PARTICIPATION AGREEMENT

THIS Agreement is made and entered into on this the _____ day of _____, 200__, by, between and among the **CITY OF _____, TEXAS** ("CITY") and member cities of the **GAS STANDING STEERING COMMITTEE** ("GSSC"). This Agreement is authorized by the Texas Interlocal Cooperation Act (V.T.C.A. Texas Government Code, Chapter 791), and other authorities.

W I T N E S S E T H:

WHEREAS, the cities in the service area of Atmos Gas have worked together collectively in a coalition to participate in the regulatory process to assure gas rates charged were just and reasonable; and

WHEREAS, the nature of gas utility regulation is undergoing substantial change as a result of state and federal legislation; and

WHEREAS, there remains a need for cities to cooperate to assure the public interest is protected and gas and other utility rates are just and reasonable; and

WHEREAS, regulatory changes now require quick response in order to have meaningful input into the rate setting process; and

WHEREAS, it is necessary to provide adequate resources to enable cities to act quickly, decisively, and jointly on gas utility regulatory developments; NOW THEREFORE,

In consideration of the premises, agreements, covenants and promises set forth herein, it is agreed as follows:

1.

Atmos Gas Standing Steering Committee
Membership and Executive Committee

The CITY and the member cities hereby form the Gas Standing Steering Committee ("GSSC"). Each member city shall, by action of its governing body, approve its membership in the GSSC and designate its representative to receive notices and participate in and vote at GSSC meetings. The GSSC shall be composed of all cities paying the current nonrefundable membership fee. The membership fee shall be established from time to time by the Executive Committee. The fee for the initial period (approximately one year) is 5¢ per capita, according to the CITY's population listed in the most recent Texas Municipal League Directory of Texas City Officials. The members shall elect an Executive Committee consisting of no more than twenty (20) persons which shall function as the Board of Directors. The Executive Committee shall at least include a representative from all member cities with a population greater than 100,000, according to the most recent Texas Municipal League Directory of Texas City Officials. The remainder of the representatives shall be selected based upon diversity of geographic location and city population size. Each city on the GSSC and each city on the Executive Committee shall have one vote,

respectively. Meetings of the Executive Committee shall be open to each city on the GSSC whether or not it has a representative on the Executive Committee.

2.

Powers of the Executive Committee

The CITY and the member cities delegate to the Executive Committee the power to intervene on behalf of GSSC member cities in gas projects, rulemaking, rate case, and related dockets and appeals thereof, represent the interests of cities in utility matters before state and federal legislative bodies and to pay for such activities. A member city may subsequently request and cause its party status to be withdrawn from such activities. The Executive Committee shall fix the amount of the membership fee from time to time.

3.

Election of Officers

The Executive Committee shall elect a chair and any co-chairs as it deems necessary who shall serve at the pleasure of the Executive Committee. The Executive Committee shall also elect a secretary/treasurer.

4.

Powers of the Officers

Each officer elected shall serve at the pleasure of the Executive Committee up to a term of four (4) years. The Executive Committee shall elect or re-elect officers at least every four (4) years. Unless terminated by the Executive Committee or the respective city governing body, the officer shall perform the duties of office until a replacement has been elected. Meetings of the Executive Committee and GSSC shall be upon call of the chair or two (2) members of the Executive Committee. The Executive Committee shall meet at least annually. The chair is authorized by action of the Executive Committee to engage consultants and attorneys and to pay for such services.

5.

Termination of Membership

A city may terminate its membership by action of its governing body, or if said city fails to pay its membership fee in full within one-hundred eighty (180) days after notification of fee due. A city is considered notified on the day written notice is sent to its last designated representative on file with the secretary/treasurer.

6.

Money Held in Trust

The officers shall hold and manage all money collected in trust for the benefit of the member cities collectively. Officers may establish prudent fund accounts that accumulate funding for activities and to pay authorized expenses. Officers shall serve without pay, but may be reimbursed reasonable out-of-pocket expenses as approved by the Executive Committee. CITY may request and receive a statement of GSSC revenues and expenses each year.

7.
Payment for Performance of Governmental Functions and Services Made from Current Revenues

By entering into this Agreement, CITY affirms that it is paying for the performance of governmental functions or services from current revenues available. The payments made under this agreement fairly and adequately compensates the GSSC for the services or functions performed under the contract.

8.
Legal Construction

In case any one or more of the terms, provisions, phrases or clauses contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall be construed as if such invalid, illegal or unenforceable portion had never been contained herein.

9.
Entire Agreement

This contract embodies the complete agreement of the parties hereto superseding all oral or written previous and contemporary agreements between the parties relating to matters herein and, except as otherwise provided herein, cannot be modified without written agreement of the parties.

10.
No Other Obligations

By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

11.
Immunity

It is expressly understood and agreed that in the execution of this Agreement, neither CITY nor GSSC waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of governmental powers and functions.

12.
Authority

The undersigned officers and/or agents are properly authorized to execute this Agreement on behalf of the parties hereto, and each hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated above.

CITY OF _____, TEXAS

GAS STANDING STEERING COMMITTEE

BY: _____

Signature

Printed/Typed Name

Title

BY: _____

Signature

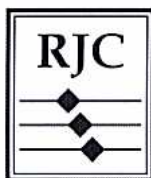
Printed/Typed Name

Title

ATTEST:
CITY SECRETARY

Signature

Printed/Typed Name



March 3, 2006

MEMOTO: Geoffrey Gay, Georgia Crump
FROM: Karl Nalepa
SUBJECT: Atmos Energy Mid Tex Rate Recommendation

On December 30, 2005 Atmos Energy Mid Tex (Atmos) filed with the Atmos Cities Steering Committee (ACSC) certain rate schedules summarizing its claimed revenue requirement in accordance with city show cause resolutions. The resolutions directed Atmos to file with the cities information sufficient to determine the Company's rate base, expenses, investment, and rate of return for a rate year ending June 30, 2005.

Atmos' rate filing alleged that its current revenue requirement is \$38.7 million more than was granted by the Railroad Commission of Texas (RRC) to TXU Gas Company (TXU Gas) in the final order in GUD 9400. Atmos' initial schedules contained adjustments to the GUD 9400 rates, but no workpapers to support the adjustments. RJC completed three rounds of discovery on Atmos to obtain supporting documentation to evaluate the schedules.

RJ Covington Consulting (RJC) has reviewed and evaluated the schedules filed by Atmos and submits these findings and recommendations to the Cities.

Summary of Recommendations

The total impact of RJC's recommendations on Atmos' filed revenue requirement is attached as Exhibit 1. This Exhibit reflects the adjustments described in this report, as well as any associated tax effects of those adjustments. These changes reduce Atmos' revenue requirement by \$73.4 million from that reflected in its show cause filing, and \$34.7 million below the revenue requirement approved in GUD 9400.

Exhibit 2 summarizes the resulting impact on rates for each customer class. RJC did not change Atmos' cost of service class allocations, but did adjust the rate design for both the customer and commodity charges. For residential customers, RJC proposes to reduce the customer charge \$1.50, from \$9.00 to \$7.50 per customer, and reduce the commodity rate 4.75¢, from \$1.2390 to \$1.1915 per mcf in the first block and from \$0.9890 to \$0.9415 per mcf in the second block. These recommended rates essentially reflect a rollback to pre-GUD 9400 levels for the residential class.

Rate of Return

Atmos included on Schedule G of its filing the same rate of return approved in GUD 9400. This rate derived from the same capital structure, same cost of debt, and same return on equity as in GUD 9400. Atmos responded in discovery that its position is that there has been no change to the capital structure and component costs established in the Company's rates since the Final Order in GUD 9400 was approved.¹

Of course, Atmos is incorrect. The final order in GUD 9400 was based on the capital structure and component costs of TXU Gas. Since then, Atmos has acquired the TXU Gas assets, and its rates should reflect that change in ownership. Using the capital structure and weighted average cost of debt reported in Atmos' Form 10Q filing as of June 30, 2005, Atmos' rate of return calculation is markedly different. Exhibit 3 summarizes these differences:

Exhibit 3

	TXU Gas - GUD 9400			Atmos Energy - Form 10Q		
	Ratio	Cost	Total	Ratio	Cost	Total
Debt	48.3%	6.57%	3.173%	57.5%	5.27%	3.026%
Preferred Stock	1.9%	5.51%	0.105%	-	-	-
Common Equity	49.8%	10.00%	4.980%	42.5%	10.00%	4.250%
Return			8.258%			7.276%

If Atmos' test year end actual capital structure and cost of debt is used, even with the 10% return on equity approved for TXU Gas in GUD 9400, its rate of return is lowered by nearly a full percentage point and its return on investment would be reduced by \$22.6 million if applied to the reduced rate base as described below.

Rate Base

Atmos included on Schedule H of its filing a total rate base of \$990 million. This includes net plant of \$1,097 million and rate base deductions of \$107 million. RJC recommends two adjustments to rate base.

First, Atmos has included \$80.4 million of general plant assigned from its shared services unit, along with \$43.9 million of accumulated depreciation. This net plant of \$36.5 million represents plant assets of Atmos Energy that have been allocated to Mid Tex since its acquisition from TXU. The details of this plant has not been documented, and since the plant did not come from TXU with the acquisition, it is plant for which a return and depreciation is likely already being recovered in the rates of other Atmos customers served by other Atmos operating units.

¹ Atmos response to ACSC 1-9.

Second, Atmos does not recognize as rate base deductions the accumulated deferred federal income taxes (ADFIT) and investment tax credits (ITC) that existed on the books of TXU Gas when the assets were acquired. Atmos responded in discovery that when TXU Gas sold its assets, the accumulated deferred income taxes recorded on its books *presumably* became due and payable.² As of December 31, 2003, the amount of ADFIT was \$140 million and the amount of ITC was \$9.6 million. RJC recommends that rates be set as though these income tax adjustments are on the books of Atmos. Atmos customers have been paying these taxes, yet lose the benefit of the adjustments if TXU keeps the deductions. And as rate base deductions, they have been used by the Company as a cost free source of capital.

The impact of these allocated plant and income tax adjustments is to reduce the rate base by \$185 million.

Depreciation Expenses

Atmos included on Schedule I of its filing total depreciation expenses of \$65.7 million. RJC recommends reducing depreciation expense by \$3.1 million. This amount is associated with the \$36.5 million of net general plant assigned from Atmos shared services unit that was removed from rate base.

Operating Expenses

Atmos included on Schedule L of its filing total Operation & Maintenance (O&M) expense of \$162 million. These expenses are \$2 million less than the amount of O&M expense approved in GUD 9400, but \$7.6 million more than the test year ending June 30, 2005.

The test year included three months when TXU Gas operated the distribution system, and nine months when the system was operated by Atmos Energy. In order to adjust its test year expenses, Atmos revised its operating expenses to account for the portion of the test year operated by TXU Gas by simply removing the three months of TXU operating data and using instead the annualized amount of the 9 months operated by Atmos (i.e: 9 months of actual data / 9 months x 12 months). The adjustment results in a \$7.4 million reduction to expenses. Atmos made additional adjustments to expenses to recognize the transition of operations from TXU and Capgemini to Atmos that increase expenses by \$15.0 million.³

On the other hand, Atmos Energy Corporation held a conference call on August 9, 2005 to present its third quarter 2005 earnings report. During that call, Atmos described a reduction in O&M expenses of \$20-\$25 million by bringing TXU Gas onto the Atmos

² Atmos response to ACSC 1-14.

³ Atmos response to ACSC 1-1 and 1-2.

platform, \$6 million in annualized savings by bringing back in the Waco call center (previously operated by Capgemini), and \$25 million of reduced General & Administrative (G&A) expenses due to over-allocation of costs from the TXU parent to TXU Gas. Atmos clarified in discovery that the \$6 million call center savings are contained in the \$20-\$25 million of O&M savings,⁴ but these estimates still suggest a reduction of \$45-\$50 million from TXU Gas' total O&M expenses.

Atmos O&M adjustments are unreasonable in several respects:

- First, Atmos clearly does not trust the validity of TXU Gas' operating expenses since it removes these expenses entirely from the test year rather than try to verify and adjust the numbers.
- Second, Atmos' method of adjusting the TXU expense values by substituting annualized Atmos values introduces another bias into the expense levels. The months removed by Atmos – July, August and September – represent traditionally low consumption months. If these expenses are replaced by expenses weighted towards winter months with the highest consumption, the replacement expenses are overstated. This problem is compounded by the cost of inevitable transition inefficiencies in the early months of operation by Atmos.
- Third, the additional adjustments made by Atmos to recognize the transition of operations to Atmos comprise, in large part, no more than management estimates of the cost of certain functions impacted by the acquisition, and are not supported by detailed workpapers. And these transition costs increase overall O&M expenses rather than reduce them.
- Fourth, Atmos' schedules do not reflect in any fashion the reductions in O&M expense discussed by the Company at its earnings conference call with the financial markets. During the call, J. Patrick Reddy, Atmos Senior Vice President and Chief Financial Officer, confirmed a \$45 million year to date reduction in expenses from that budgeted by Atmos. Assuming Atmos' budgets were set no higher than TXU Gas' operating expenses, then some or all of this reduction should be passed on to consumers as an adjustment to revenue requirements.

RJC recommends the following adjustments to O&M expenses:

- Use the O&M expenses associated with the last three months of the test year – April, May and June – to estimate the TXU expense levels. This moderates the impact of the winter bias and early transition inefficiencies and results in an additional \$5.8 million reduction in O&M expense.
- Remove one half of the transition adjustments proposed by Atmos. None of the components of the total increase of \$15.0 million are adequately supported, so it is reasonable to expect that some level of adjustment is necessary. This adjustment results in a \$7.5 million reduction to O&M expense.
- Adjust account no. 922, Administrative Expenses Transferred, to reflect \$22.5 million of expense reductions associated with acquisition of the TXU Gas assets

⁴ Atmos response to ACSC 3-2.

by Atmos. This represents one half of the \$45 million savings suggested by Atmos and allows for some uncertainty in the specific nature of the savings.

Total O&M expense reductions are \$35.8 million.

Service Charge Revenue

Atmos included on Schedule O-4 of its filing service charge revenues of \$19.9 million. However, test year service call revenues were \$0 when GUD 9400 test year reflected 35,676 calls and \$927,576 in revenues. Atmos responded in discovery that it did not record any revenue from service calls during the test year ending June 30, 2005.⁵ This does not mean Atmos had no service calls and does not explain what happened to the 35,676 calls received in the prior test year. Therefore, RJC recommends these revenues be added back into total service charge revenues and this reduces base rate revenue requirements by the same \$927,576.

Gas Reliability Infrastructure Program (GRIP)

The GRIP statute was intended to encourage a gas utility to make investments in safety and reliability upgrades to its system. To the extent that a utility did not over-earn on its approved rate of return, the utility was granted the opportunity to impose a surcharge on its customers to recover return, depreciation, and taxes associated with its annual incremental investment.

Atmos has filed requests to impose GRIP surcharges related to its incremental investment in 2003 (filed December 2004) and 2004 (filed September 2005). Atmos sought recover \$6.7 million through its 2003 surcharge and another \$6.7 million through its 2004 surcharge. While Cities did deny these requests, Atmos appealed these decisions to the Texas Railroad Commission, which approved the surcharges.

According to the statute, now that the investments reflected in GRIP are incorporated into the rates being set in this proceeding, the approved GRIP surcharges should end with adoption of the Cities' rate ordinance.

Cities have also shown in previous analyses that the GRIP surcharges were unnecessary because Atmos was already generating additional revenues in excess of its return on incremental investment. Therefore, any amounts collected under the GRIP surcharges should be refunded in this proceeding. However, Atmos did not impose its 2003 GRIP surcharge until October 2005 and its 2004 surcharge until February 2006.⁶ While there are no GRIP revenues for which to adjust the revenue requirements, any amounts collected prior to the Cities' rate ordinance should be refunded.

⁵ Atmos response to ACSC 1-26.

⁶ Atmos response to ACSC 3-15.

EXHIBIT 1

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Systemwide Cost of Service

Line No.	Description	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05	Difference From Final Order
	(a)	(b)	(c)	(c)	(d)
1	Operating Revenue				
2	Residential (non-gas costs)	\$ 270,584,752	\$ 295,503,658	\$ 238,767,430	\$ (31,817,321)
3	Residential (gas costs)	314,197,054	314,197,054	314,197,054	-
4	Total Residential	584,781,805	609,700,712	552,964,484	(31,817,321)
5					
6	Commercial (non-gas costs)	\$ 68,103,234	\$ 73,415,254	\$ 60,303,270	\$ (7,799,964)
7	Commercial (gas costs)	194,651,072	194,651,072	194,651,072	-
8	Total Commercial	262,754,306	268,066,326	254,954,342	(7,799,964)
9					
10	Industrial/Transportation (non-gas costs)	\$ 18,924,434	\$ 24,173,053	\$ 19,677,447	\$ 753,013
11	Industrial/Transportation (gas costs)	26,063,143	26,063,143	26,063,143	-
12	Total Industrial/Transportation	44,987,577	50,236,196	45,740,590	753,013
13					
14	Total (non-gas costs)	\$ 357,612,420	\$ 393,091,965	\$ 318,748,147	\$ (38,864,273)
15	Total (gas costs)	534,911,269	534,911,269	534,911,269	-
16	Total Operating Revenue	892,523,689	928,003,234	853,659,416	(38,864,273)
17					
18	Total Other Revenue	\$ 17,882,192	\$ 21,085,415	\$ 22,012,991	\$ 4,130,799
19					
20	Total Operating and Other Revenue	\$ 910,405,881	\$ 949,088,649	\$ 875,672,407	\$ (34,733,473)
21					
22					
23	Total Revenue Requirement				
24					
25	Operating Expenses				
26	Gas Cost	\$ 534,911,269	\$ 534,911,269	\$ 534,911,269	
27					
28	Operation and Maintenance Expenses	164,130,220	162,340,824	126,522,180	
29					
30	Taxes Other than Income Taxes	70,374,371	75,400,544	71,423,693	
31					
32	Depreciation and Amortization Expense	55,042,990	65,663,511	62,591,960	
33					
34	Interest on Customer Deposits	1,472,587	2,325,821	2,325,821	
35	Interest on Customer Advances	124,993	126,573	126,573	
36					
37	Federal Income Taxes	20,785,888	26,568,125	18,627,900	
38					
39	Return on Rate Base	63,563,562	81,751,983	59,143,011	
40					
41	Total Revenue Requirement	\$ 910,405,880	\$ 949,088,649	\$ 875,672,407	
42					
43	Note: The above figures include the cost of gas.				

EXHIBIT 2

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Rates

Line No.	Rate R - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
1	Customer Charge	\$ 9.00	\$ 9.73	\$ 7.50
2				
3	Block 1 Commodity Rate (0-3 Mcf)	\$ 1.2390	\$ 1.3991	\$ 1.1915 per Mcf
4	Block 2 Commodity Rate (over 3 Mcf)	\$ 0.9890	\$ 1.1491	\$ 0.9415 per Mcf
5				
6	Average Monthly Bill (6 Mcf without Gas Cost)	\$ 16.61	\$ 18.40	\$ 14.72 per Month
7				
8	Average Monthly Bill (6 Mcf with Gas Cost)	\$ 36.64	\$ 38.44	\$ 34.75 per Month
9				
10				
11				
12	Rate C - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
13				
14	Customer Charge	\$ 15.50	\$ 17.93	\$ 12.50
15				
16	Block 1 Commodity Rate (0-30 Mcf)	\$ 0.7894	\$ 0.8215	\$ 0.7417 per Mcf
17	Block 2 Commodity Rate (30-350 Mcf)	\$ 0.5394	\$ 0.5715	\$ 0.4917 per Mcf
18	Block 3 Commodity Rate (Over 350 Mcf)	\$ 0.2894	\$ 0.3215	\$ 0.2417 per Mcf
19				
20	Average Monthly Bill (30 Mcf without Gas Cost)	\$ 41.44	\$ 45.03	\$ 36.76 per Month
21				
22	Average Monthly Bill (30 Mcf with Gas Cost)	\$ 141.46	\$ 145.05	\$ 136.78 per Month
23				
24				
25				
26	Rate T - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
27				
28	Customer Charge	\$ 150.00	\$ 241.86	\$ 300.00
29				
30	Block 1 Commodity Rate (0-1,500 MMBtu)	\$ 0.4882	\$ 0.5935	\$ 0.4977 per MMBtu
31	Block 2 Commodity Rate (Next 3,500 MMBtu)	\$ 0.3382	\$ 0.4435	\$ 0.3477 per MMBtu
32	Block 3 Commodity Rate (Next 45,000 MMBtu)	\$ 0.1882	\$ 0.2935	\$ 0.1977 per MMBtu
33	Block 4 Commodity Rate (Over 50,000 MMBtu)	\$ 0.0382	\$ 0.1435	\$ 0.0477 per MMBtu
34				
35	Average Monthly Bill (300 MMBtu without gas cost)	\$ 313.48	\$ 443.98	\$ 475.07 per Month
36				
37	Average Monthly Bill (300 MMBtu with gas cost)	\$ 1,313.43	\$ 1,443.84	\$ 1,474.93 per Month

Council Agenda Item: #ES1

There are no attachments for this item.

Council Agenda Item: #ES2

There are no attachments for this item.